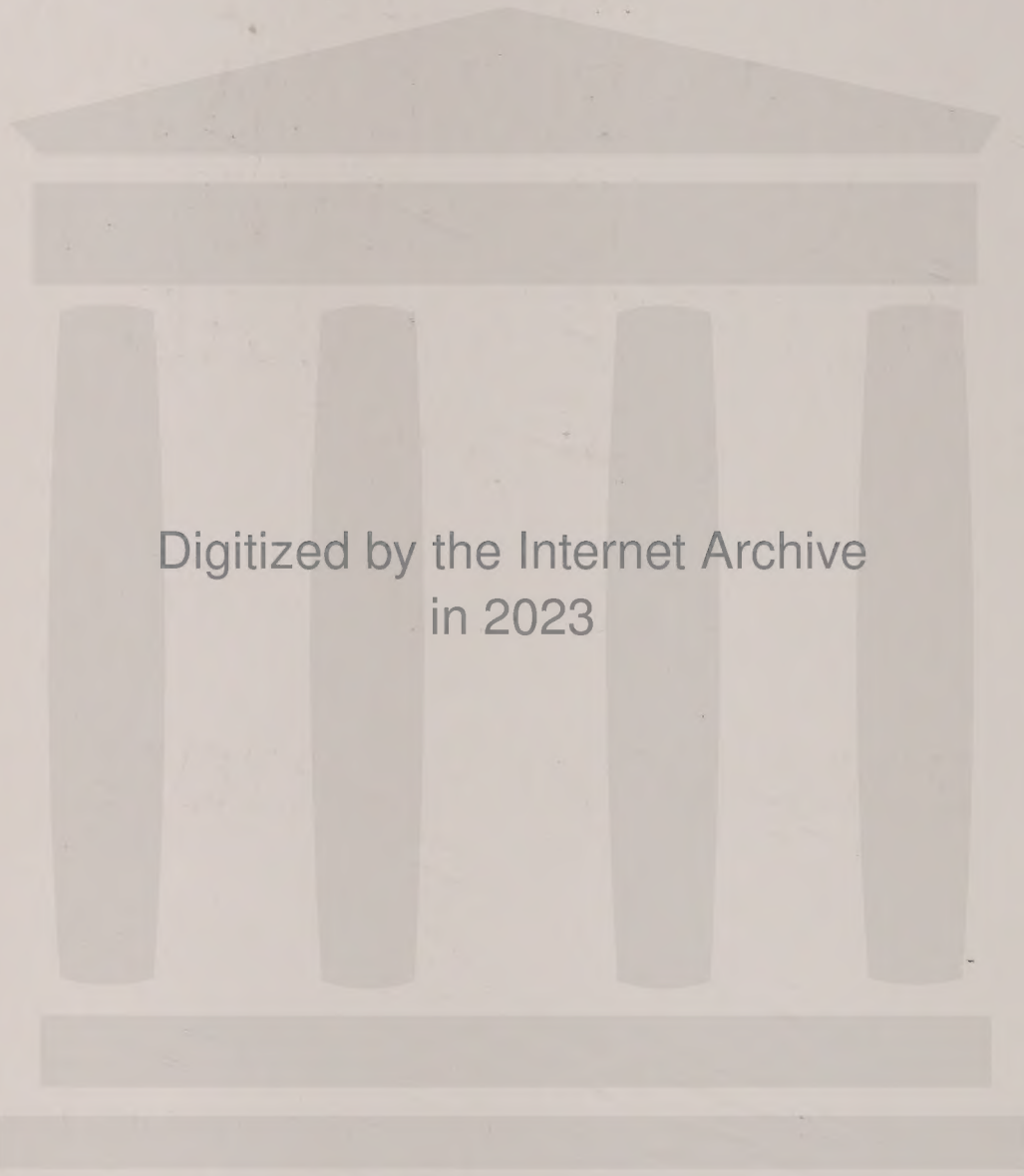


2007-2008 EDITION

**NEW HAMPSHIRE
FOR-PROFIT
AND NON-PROFIT
BUSINESS LAWS
ANNOTATED WITH
UPDATED FORMS**





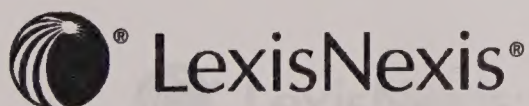
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PREPARE

NEW HAMPSHIRE
FOR-PROFIT AND
NON-PROFIT
BUSINESS LAWS
ANNOTATED
WITH UPDATED
FORMS

2007-2008 EDITION

Reprinted from LEXIS New Hampshire Revised Statutes Annotated
and 2007 Cumulative Supplement



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PREFACE

This publication is designed to provide a compilation of statutes relating to corporations, partnerships, and associations. It contains updates to the full text of the statutes most frequently consulted in organizing and conducting the general activities of a non-profit or business corporation, a professional association, or a partnership, accompanied by statutory notes and annotations, an appendix of forms, and an index.

The statutes included in this publication include new legislation and amendments enacted through Chapter 382 of the 2007 Session of the General Court.

This publication contains annotations taken from decisions of the New Hampshire Supreme Court and from decisions of the appropriate federal courts posted on lexis.com as of August 17, 2007. These cases will be printed in the following reports:

New Hampshire Reports
Atlantic Reporter, 2nd Series
Federal Supplement, 2nd Series
Bankruptcy Reporter
Federal Rules Decisions
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers'
Edition, 2nd Series

Additionally, annotations have been taken from the following sources:

Opinions of the Attorney General
New Hampshire Bar Journal
American Law Reports, 6th

In planning this publication, suggestions as to format and content were solicited from many sources, and we are indebted to all those professionals who provided us with direction.

We are committed to providing attorneys and business law professionals with the most comprehensive, current and useful manuals possible. Accordingly, regular revisions of this book are planned.

We actively solicit your comments and suggestions. If you believe that there are statutes which should be included (or excluded), or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-833-9844; fax us toll-free at 1-800-643-1280; Email us at llp.clp@lexisnexus.com; or visit our website at <http://www.lexisnexus.com>. By providing us with your informed comments, you will be assured of having available a working tool which increases in value with each edition.

December 2007

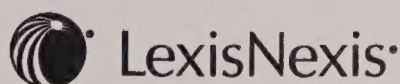


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NEW HAMPSHIRE FOR-PROFIT AND NON-PROFIT BUSINESS LAWS ANNOTATED WITH UPDATED FORMS

TITLE I THE STATE AND ITS GOVERNMENT

CHAPTER 5 DEPARTMENT OF STATE

Department and Secretary of State

Section
5:10. Office Fees.

Department and Secretary of State

5:10. Office Fees.

Except as otherwise provided, the following fees shall be paid to the secretary of state for the use of the state: For every commission issued to a justice of the peace or to a notary public, \$75, \$25 of which shall be deposited into the fund established by RSA 660:31 for the use of the secretary of state and the attorney general as provided by RSA 455:17; for every certificate pertaining to the existence of a corporation, trade name, or other business entity, or writ served on the same, \$5; for every such certificate in long form, \$10; for every apostille provided under the Hague Convention of 1961 and for every certificate for a notary public or justice of

the peace, \$10; for every other certificate under seal of the state, \$5; for engrossing private acts, \$1 for each page of 240 words; for expedited service of every 10 documents or any part thereof, \$25.

Source.

RS 229:23. CS 245:23. GS 272:24. GL 290:24. PS 287:29. 1893, 64:2. 1919, 59:1. 1921, 84:1. PL 14:15. RL 21:15. 1949, 265:12. RSA 5:10. 1977, 563:35. 1987, 393:7. 1990, 3:19, eff. Feb. 20, 1990. 2003, 319:19, eff. July 1, 2003. 2005, 118:7, eff. Jan. 1, 2006.

Amendments

—2005. Substituted “\$75, \$25 of which shall be deposited into the fund established by RSA 660:31 for the use of the secretary of state and the attorney general as provided by RSA 455:17” for “\$50”.

—2003. Inserted “for every apostille provided under the Hague Convention of 1961 and for every certificate for a notary public or justice of the peace, \$10” following “long form, \$10” and added “for expedited service of every 10 documents or any part thereof, \$25” at the end of the second sentence.

—1990. Substituted “\$50” for “\$30” following “notary public” and “\$5” for “\$1” preceding “for engrossing”.

—1987. Rewritten to the extent that a detailed comparison would be impracticable.

—1977. Substituted “\$30” for “\$10” following “notary public”.

Separability clause.

This section is subject to a separability clause.

TITLE V TAXATION

CHAPTER 77-A

BUSINESS PROFITS TAX

Section	Definitions.
77-A:1.	Imposition of Tax.
77-A:2-a.	Minimum Tax Due. [Repealed.]
77-A:2-b.	Conditions for Employment of Only Water's Edge Combination.
77-A:2-c.	Tax on Qualified Venture Capital Fund. [Repealed.]
77-A:3.	Apportionment.
77-A:4.	Additions and Deductions. [Repealed.]
77-A:4-a.	Special Rule for "Safe Harbor" and Other Similar Leases.
77-A:5.	Credits.
77-A:5-a.	Tax Expenditure Report.
77-A:5-b.	Election and Reporting for Qualified Investment Companies.
77-A:6.	Returns, Declarations, and Combined Reporting.
77-A:7.	Payments Due With Returns and With Estimates.
77-A:7-a.	Interest. [Repealed.]
77-A:8.	Additional Returns.
77-A:9.	Extension of Time for Returns.
77-A:10.	Corrections.
77-A:11.	Taxpayer Records.
77-A:12.	Failure to Make Returns; False Returns or Records. [Repealed.]
77-A:13.	Adjustments; Procedure. [Repealed.]
77-A:14.	Appeal. [Repealed.]
77-A:15.	Administration.
77-A:16.	Confidentiality of Department of Revenue Administration Records. [Repealed.]
77-A:17.	Preference. [Repealed.]
77-A:18.	Certifications for Dissolution, Withdrawal and Good Standing.
77-A:19.	Lien for Tax. [Repealed.]
77-A:20.	Distribution of Increase in Revenue. [Repealed.]
77-A:20-a.	Distribution of Funds.
77-A:21.	Severability.

Cross References.

Business enterprise tax, generally, see RSA 77-E:1 et seq.

NOTES TO DECISIONS

1. Constitutionality
2. Construction
3. Construction with other laws

1. Constitutionality

Proposed legislation, which would establish a class of property known as "tax base" and imposed a one percent tax on "tax base" and would retain the eight percent tax imposed on "taxable business profits" under this chapter, where "tax base" was simply a slightly different and broader definition of business income than "taxable business profits" under this chapter, could not impose the one percent tax because it would similarly result in the unconstitutional imposition of differing rates of tax on essentially the same class of property. Opinion of the Justices, 123 N.H. 344, 461 A.2d 129, 1983 N.H. LEXIS 286 (1983).

The imposition by proposed legislation of a uniform business tax on a business organization's "tax base," with the

provision for a credit against any tax due under this chapter for tax paid under the proposed legislation, would result in unconstitutional double taxation, since any business required to pay any tax pursuant to this chapter would be paying a tax on property which had already been included and taxed in "tax base" under the proposed legislation. Opinion of the Justices, 123 N.H. 344, 461 A.2d 129, 1983 N.H. LEXIS 286 (1983).

Unconstitutional double taxation would not occur if the legislature chose to impose a separate business tax on items such as compensation or payroll, to the extent that such items were not presently taxed under this chapter, and similarly provision of a credit for the amount of such a tax against the tax due under this chapter would be within the broad powers allotted to the legislature; as long as all business organizations in the state were subject to both tax schemes, and as long as the credit, if provided, were available to all on a uniform and equal bases, such legislative action would not violate the constitutional requirements of reasonableness and uniformity. Opinion of the Justices, 123 N.H. 344, 461 A.2d 129, 1983 N.H. LEXIS 286 (1983).

Imposition of tax on gains realized on January 13 and March 31, 1970, on the basis that this chapter, effective April 22, 1970, applies to business profits earned since January 1, 1970, did not violate the state constitution's prohibition of retrospective laws. Estate of Kennett v. State, 115 N.H. 50, 333 A.2d 452, 1975 N.H. LEXIS 221 (1975).

While the state constitution entrusts the legislature with broad discretion to classify property for the purpose of taxation, it prohibits the legislature from classifying taxpayers for the purposes of taxation, and a law the effect of which is to exempt taxpayers selling spirits and wines to the state liquor commission from the state business profits tax would be unconstitutional, though a law classifying net income from the sale of spirits and wines to the state liquor commission as property exempt from taxation for a just reason would be constitutional. Opinion of the Justices, 115 N.H. 306, 339 A.2d 450, 1975 N.H. LEXIS 295 (1975).

That holding company formed for the purpose of managing investment portfolio for its stockholders was subject to this chapter, and individuals and partnerships receiving some or all of their income from dividends were not, did not result in unconstitutional discrimination. Concord Investment Corporation v. New Hampshire Tax Commission, 114 N.H. 105, 316 A.2d 192, 1974 N.H. LEXIS 218 (1974).

That a corporation is subject to the franchise tax, bank tax or business profits tax, and that some of its shares are held by a holding company deriving its income from the shares it holds in various corporations and that the holding company is subject to the business profits tax does not result in an unconstitutional double taxation. Concord Investment Corporation v. New Hampshire Tax Commission, 114 N.H. 105, 316 A.2d 192, 1974 N.H. LEXIS 218 (1974).

The taxable event under this chapter is the actual realization of gain or profit from an asset by converting the asset into money or other assets, and the realized gain or profit is considered income to the taxpayer only in the year it is actually received, and it cannot be said that this chapter is a levy on ownership of property contravening the rule of proportionality for assessments upon estates under N.H. Const. Pt. II, art. 5, or that it is a retrospective law prohibited by N.H. Const. Pt. I, art. 23. Shangri-La, Inc. v. State, 113 N.H. 440, 309 A.2d 285, 1973 N.H. LEXIS 292 (1973).

2. Construction

Since this chapter is an income tax which adopts federal law to determine net taxable income, supreme court would refer to federal tax principles in construing meaning of term used. Shangri-La, Inc. v. State, 113 N.H. 440, 309 A.2d 285, 1973 N.H. LEXIS 292 (1973).

3. Construction with other laws

Where RSA 84 imposed a tax upon the par value of a bank's capital stock and the interest and dividends paid out by the bank to its depositors, and this chapter imposed a business profits tax on dividends paid by the subsidiary bank to its

parent corporation, it was found that although both statutes taxed a cash stream passing through a bank, the taxes were not identical and the stream of money that was earned by the subsidiary bank prior to the enactment of this chapter and then later passed through to parent corporation had not previously been subject to taxation as business profits; therefore, no tax duplication occurred as to the actual dividend income of the plaintiff parent corporation. *First Financial Group Inc., v. State*, 121 N.H. 381, 430 A.2d 162, 1981 N.H. LEXIS 327 (1981).

Where RSA 84 imposed a tax upon par value of a bank's capital stock and also upon the interest and dividends paid out by the bank to its depositors, and this chapter imposed a tax on business profits, including dividends paid by the subsidiary bank to its parent corporation, it was found that although there was some similarity between the taxes imposed by the two statutes and there was a similarity between the two corporations, when these two factors were considered together with all the facts of the case, the two taxes imposed upon the two different corporate entities could not be considered so nearly identical as to result in double taxation. *First Financial Group Inc., v. State*, 121 N.H. 381, 430 A.2d 162, 1981 N.H. LEXIS 327 (1981).

RESEARCH REFERENCES

New Hampshire Code of Administrative Rules.

Rules of the Department of Revenue Administration, Rev 302.04, 302.12, 303.04, 311.16, New Hampshire Code of Administrative Rules Annotated.

New Hampshire Bar Journal.

For article, "Assisting Clients In Choosing the Legal Form of Their Business: A Three-Step Method," see 33 N.H.B.J. 321 (1992).

For article, "An Analysis of the New Hampshire Supreme Court's Recent Application of the 'Proportional and Reasonable' Standard to Restrict the Legislature's Taxing Power," see 33 N.H.B.J. 331 (1992).

For article, "The Policy and Structure of the Business Enterprise Tax," see 34 N.H.B.J. 5 (1993).

For article, "New Hampshire Business Profits Tax: Fourteen Years Later," see 25 N.H.B.J. 223 (1984).

For article, "Nominee and Other Real Estate Holding Trusts in New Hampshire Real Estate Practice," see 31 N.H.B.J. 41 (1990).

ALR.

Exemption of agriculture activities or occupations from business or occupation license or tax. 38 A.L.R.4th 1074.

77-A:1. Definitions.

When appearing in this chapter:

I. "Business organization" means any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organization; organized for gain or profit, carrying on any business activity within the state, except such enterprises as are expressly made exempt from income taxation under the United States Internal Revenue Code as defined in RSA 77-A:1, XX. Each enterprise under this definition shall be subject to taxation under RSA 77-A:2 as a separate entity, unless specifically authorized by this chapter to be treated otherwise, such as, but not limited to, combined reporting. Trusts treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their owners, and such owners shall be subject to the tax thereon to the extent such owners

would be considered a business organization hereunder notwithstanding the existence of the trust. The use of consolidated returns as defined in the United States Internal Revenue Code as defined in RSA 77-A:1, XX is not permitted. Notwithstanding any other provision of this paragraph, an enterprise shall not be characterized as a business organization and shall be excluded from taxation at the entity level if it elects to be treated as a qualified investment company as defined in RSA 77-A:1, XXI. A partnership, limited liability company, estate, trust except grantor trusts pursuant to section 671 of the United States Internal Revenue Code, "S" corporation, real estate investment trust, or any other such entity, other than an organization electing to be treated as a qualified investment company as defined in RSA 77-A:1, XXI whose net income is reportable by the true owners either directly or indirectly shall be subject to tax at the entity level, and no part of such earnings or loss shall be included in the calculation of the gross business profits of the owners of such entity.

II. "Commissioner" means the commissioner of revenue administration.

III. "Gross business profits" means:

(a) In the case of a corporation, except "S" corporations, or any other business organization required to make and file a United States corporation income tax return, or in the case of a corporation which does not make and file a separate United States corporation income tax return for itself because it is a member of an affiliated group pursuant to the provisions of chapter 6 of the United States Internal Revenue Code as defined in RSA 77-A:1, XX, the amount of taxable income as would be determinable under the provisions of the United States Internal Revenue Code as defined in RSA 77-A:1, XX before the application of any net operating loss deduction, special deductions shown on line 29 of the federal corporate income tax return, or any other special deductions allowable only to a certain class of corporate taxpayer.

(b) In the case of "S" corporations or any other business organizations required to make and file an "S" corporation return, the net profit from all business activity determined in accordance with rules adopted by the department of revenue administration under RSA 541-A.

(c) In the case of a partnership or any other business organization required to make and file a United States partnership return of income, the amount of ordinary income as would be determinable under the provisions of the United States Internal Revenue Code as defined in RSA 77-A:1, XX increased by the amounts shown as payments to partners on the federal partnership return of income, the net amount of any gains from the sale of partnership assets, items of income specifically allocated to partners and decreased by any deductions specifically allo-

cated to partners or losses on the sale of partnership assets.

(d) In the case of a proprietorship, the amount of net profit or loss from a business, profession, rental, or farming activities as would be determinable under the provisions of the United States Internal Revenue Code as defined in RSA 77-A:1, XX adjusted by the amount of any gains or losses from the sale of assets held or used in business activity.

(e) In the case of a trust, estate, or any other business organization engaging in business activity, the amount of net profit from such business activity and the net amount of any gains from the sale of assets held for use in business activity.

(f) In the case of any business organization which is part of a water's edge combined group and which does not make or file a United States income tax return or schedule under subparagraphs (a)-(d), the amount of net income as would be determinable under the provisions of the United States Internal Revenue Code as defined in RSA 77-A:1, XX and applied within the concepts of RSA 77-A for such business organizations.

IV. "Taxable business profits" means gross business profits adjusted by the additions and deductions provided in RSA 77-A:4 and then adjusted by the method of apportionment provided in RSA 77-A:3.

V. "Taxable period" means the calendar year or fiscal year which the taxpayer uses for United States income tax purposes, or that part of a year for which a return is made.

VI. "Gross business income" means all income for federal income tax purposes from whatever source derived in the conduct of business activity, including but not limited to gross proceeds from sales, compensation for rendering services, gross proceeds realized from trading in stocks, bonds, or other evidences of indebtedness, gross proceeds realized from sale of assets used in trade or business, interest, discount, gross rents, royalties, fees, commissions, dividends, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense paid or accrued and without any deduction on account of losses.

VII. "Prescribed Filing Date" means the original statutory due date, or approved extended due date.

VIII. "Prescribed Payment Date" means the original statutory due date.

IX. "Qualified charitable contributions" means a charitable contribution of tangible personal property as defined in section 1221(1) of the United States Internal Revenue Code as defined in RSA 77-A:1, XX, but only if all of the following conditions are met:

(a) The contribution is either to an educational organization which is described in section 170(b)(1)(A)(ii) of the United States Internal

Revenue Code as defined in RSA 77-A:1, XX or to an institution of higher education as defined in section 3304(f) of the United States Internal Revenue Code as defined in RSA 77-A:1, XX or to both an educational organization and an institution of higher education as defined in this subparagraph.

(b) The contribution is made not later than one year after the date the manufacture or purchase of the property is substantially completed.

(c) The original use of the property is by the donee.

(d) The property is a computer, scientific equipment, or apparatus, all of the use of which by the donee is directly for the education of students in the state of New Hampshire.

(e) The property is not transferred by the donee in exchange for money, other property, or services.

(f) The taxpayer receives from the donee a written statement representing that its use and disposition of the property shall be in accordance with these provisions.

(g) The contribution is made between July 1, 1983, and June 30, 1984.

X. "Qualified research contribution" means a charitable contribution by a taxpayer of tangible personal property as defined in section 1221(1) of the United States Internal Revenue Code as defined in RSA 77-A:1, XX, but only if all of the following conditions are met:

(a) The contribution is either to an educational organization which is described in section 170(b)(1)(A)(ii) of the United States Internal Revenue Code as defined in RSA 77-A:1, XX or to an institution of higher education as defined in section 3304(f) of the United States Internal Revenue Code as defined in RSA 77-A:1, XX or to both an educational organization and an institution of higher education as defined in this subparagraph.

(b) The contribution is made not later than 2 years after the date the manufacture or purchase of the property is substantially completed.

(c) The original use of the property is by the donee.

(d) The property is scientific equipment or apparatus, substantially all of the use of which by the donee is for research or experimentation, or for research training in physical or biological sciences for students.

(e) The property is not transferred by the donee in exchange for money, other property, or services.

(f) The taxpayer receives from the donee a written statement representing that its use and disposition of the property shall be in accordance with these provisions.

(g) For all tax years beginning after December 31, 1992, the United States Internal Revenue Code of 1986, in effect on August 10, 1993.

XI. "Business asset" means any tangible or intangible property, whether real or personal, previously used, currently used, or available for use in any business activity.

XII. "Business activity" means a substantial economic presence evidenced by a purposeful direction of business toward the state examined in light of the frequency, quantity, and systematic nature of a business organization's economic contacts with the state. "Business activity" includes, but is not limited to, a group of actions performed by a business organization for the purpose of earning income or profit from such actions and includes every operation which forms a part of, or a step in, the process of earning income or profit from such group of actions. The actions ordinarily include, but are not limited to, the employment of business assets, the receipt of money, property, or other items of value and the incurring or payment of expenses. Notwithstanding any other provision of this paragraph, a holder of an ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI, shall not be deemed to be carrying on any business activity within this state due solely to its holding an ownership interest in such qualified investment company.

XIII. "Combined net income" means the revenues less expenses as would be determinable under the provisions of the Internal Revenue Code as defined in RSA 77-A:1, XX and applied within the concepts of RSA 77-A for all business organizations conducting a unitary business regardless of whether such business organizations are required to file a federal income tax return.

XIV. "Unitary business" means one or more related business organizations engaged in business activity both within and without this state among which there exists a unity of ownership, operation, and use; or an interdependence in their functions.

XV. "Water's edge combined group" means a group of business organizations as defined in RSA 77-A:1, I operating a unitary business, except for overseas business organizations, as defined in paragraph XIX; provided, however, overseas business organizations shall only be excluded from the definition of "water's edge combined group" if the following criteria are met:

(a) The taxpayer certifies that transactions conducted between such business organizations and other members of the group are on a comparable basis to transactions between other business organizations owned or controlled by the taxpayer and any members of the water's edge combined group; and

(b) The taxpayer agrees to report to the commissioner any adjustments as finally determined by the United States Internal Revenue Service with respect to such transactions between any related business organizations as may have a bearing on the comparability of transactions referred to in subparagraph (a).

These adjustments shall be made to the 80/20 business organizations so that a comparable basis shall be maintained for New Hampshire tax purposes. Such report shall be made in the manner and within the time limits as provided in RSA 77-A:10. Nothing in this paragraph shall exclude from taxation any business organization carrying on business activity within the state.

XVI. "Water's edge method" means the determination of taxable business profits for a group of business organizations conducting a unitary business by adding their combined net income, the additions and deductions provided in RSA 77-A:4 for the members of the group, and apportioning the result as provided in RSA 77-A:3.

XVII. "Foreign dividends" as used in RSA 77-A:3, II means dividend income received from affiliated business organizations, which have 80 percent or more of the average of their payroll and property assignable to a location outside the 50 states and the District of Columbia.

XVIII. "Foreign property, payroll and sales" as used in RSA 77-A:3, II means the property, payroll and sales data of affiliated business organizations which have 80 percent or more of the average of their payroll and property assignable to a location outside the 50 states and the District of Columbia, and which have paid dividends to a member of the water's edge combined group.

XIX. "Overseas business organizations" means business organizations with 80 percent or more of the average of their payroll and property assignable to a location outside the 50 states and the District of Columbia.

XX. "United States Internal Revenue Code" means:

(a) The United States Internal Revenue Code without the rules, regulations, forms, and procedures of the United States Internal Revenue Service. The rules, regulations, forms and procedures of the United States Internal Revenue Service may, however, be used by the commissioner of revenue administration in formulating rules for adoption under RSA 541-A. This definition shall be operative unless and until a specific statutory exception to its adoption is provided in this chapter, or until the application of one of its provisions is held to violate the New Hampshire constitution.

(b) For all tax years beginning before January 1, 1987, the United States Internal Revenue Code (1954) as amended.

(c) For all tax years beginning after December 31, 1986, and tax years ending before January 1, 1988, the United States Internal Revenue Code of 1986 in effect on December 22, 1987.

(d) For all tax years beginning after December 31, 1987, and tax years ending before January 1, 1989, the United States Internal Revenue Code of 1986 in effect on November 10, 1988.

(e) For all tax years beginning after December 31, 1988, and tax years ending before January 1, 1991, the United States Internal Revenue Code of 1986 in effect on December 19, 1989.

(f) For all tax years beginning after December 31, 1990, and tax years ending before January 1, 1993, the United States Internal Revenue Code of 1986 in effect on November 5, 1990.

(g) For all tax years beginning after December 31, 1992, and tax years ending before January 1, 1995, the United States Internal Revenue Code of 1986, in effect on August 10, 1993.

(h) For all tax years beginning after December 31, 1994, and tax years ending before January 1, 1997, the United States Internal Revenue Code of 1986, in effect on December 31, 1994.

(i) For all tax years beginning after December 31, 1996, the United States Internal Revenue Code of 1986, in effect on December 31, 1996.

(j) For all tax years beginning after January 1, 1997, the United States Internal Revenue Code of 1986 in effect on December 31, 1997.

(k) For all tax years beginning after January 1, 1998, the United States Internal Revenue Code of 1986 in effect on December 31, 1998.

(l) For all tax years beginning after January 1, 2000, the United States Internal Revenue Code of 1986 in effect on December 31, 2000.

XXI. (a) "Qualified investment company" means:

(1) A regulated investment company as defined in section 851 of the United States Internal Revenue Code as defined in RSA 77-A:1, XX;

(2) An organization that is an investment company under the Investment Company Act of 1940 as amended; or

(3) An organization that would be an investment company under the Investment Company Act of 1940, as amended, but for the exception from investment company status provided by section 3(c)(1) or 3(c)(7) of said Investment Company Act.

(b) A qualified investment company shall limit its activities to investment or other activities consistent with its organizational purpose and those incidental to or in support of such activities provided that any such exception from investment company status by reason of section 3(c)(7) is available only to issuers whose securities are owned by persons or organizations who are deemed under section 3(c)(7) or any order, regulation or interpretation thereunder not to require protection under the provisions of the Investment Company Act by reason of their size, nature, status, or sophistication. A business organization seeking qualified investment company status shall file an election pursuant to RSA 77-A:5-b.

XXII. "Compensation", for the purposes of RSA 77-A:5, VII, means all wages, salaries, fees, bonuses, commissions, or other items, including the following employee benefits: health, life and disability insurance and pensions, profit sharing and retirement benefits.

XXIII. "Eligible employee" means any individual employed by a business organization who, as of the last day of the applicable tax year:

(a) Has been employed by such business organization for at least 6 consecutive months;

(b) Has not been an eligible employee of such business organization or a substantially similar predecessor business organization for any prior taxable year; and

(c) Performs all but an incidental portion of services at a location or locations within the state. For the first taxable year in which the job creation tax credit allowed under RSA 77-A:5, VII, is effective, no employees employed on the first day of such taxable year shall be treated as eligible employees of such business organization for such first taxable year or any succeeding taxable year. For purposes of this paragraph, the commissioner is authorized to adopt rules pursuant to RSA 541-A to define the terms "substantially similar predecessor business organization" and "incidental portion of services."

XXIII-a. "Limited liability company" means a limited liability company formed under RSA 304-C or a foreign limited liability company as defined in RSA 304-C:1, IV. In the case of a limited liability company required to make and file a United States partnership return of income, the provisions of this chapter shall be applied as though the limited liability company were a partnership and its members were partners.

XXIV-XXIX. [Repealed.]

Source.

1970, 5:1. 1971, 515:1, 2, 5. 1973, 544:11, VII; 579:2, 3. 1975, 503:2-4. 1977, 588:28. 1979, 446:1. 1981, 445:1-3. 1982, 42:91. 1983, 318:1, 2; 444:1. 1985, 414:6-9. 1986, 153:2, 3, 8. 1987, 407:1-4. 1988, 23:6. 1989, 50:15. 1991, 67:9-11; 354:6; 362:1. 1993, 313:9, 10, eff. July 1, 1993; 350:5, eff. at 12:01 a.m., July 1, 1993; 350:6, 7, eff. July 1, 1993. 1994, 178:1, eff. May 23, 1994; 326:4, eff. July 1, 1994. 1995, 45:3, eff. July 2, 1995. 1996, 154:1. 1997, 189:3, eff. July 1, 1997. 1998, 105:2, eff. Aug. 1, 1998; 163:3, 4, 8, I, eff. July 1, 1998. 1999, 163:2, eff. Aug. 29, 1999. 2001, 158:72, eff. Sept. 3, 2001. 2004, 143:2, 3, 8, III, eff. May 24, 2004. 2007, 263:127, eff. July 1, 2007.

References in text.

Section 671 of the United States Internal Revenue Code, referred to in par. I, is classified to 26 USCS § 671.

The United States Internal Revenue Code of 1986, referred to in par. XX(h), is classified to 26 USCS § 1 et seq.

Section 851 of the United States Internal Revenue Code, referred to in par. XXI(a)(1), is classified to 26 USCS § 851.

The Investment Company Act of 1940, referred to in par. XXI(a)(2), is classified to 15 USCS § 80a-1 et seq.

Section 3(c)(1) and (c)(7) of the Investment Company Act of 1940, referred to par. XXI(a)(3), is classified to 15 USCS § 80a-3(c)(1) and (c)(7), respectively.

Chapter 6 of the Internal Revenue Code, referred to in subpar. III(a), is classified to 26 USCS §§ 1501-1505, 1551-1564.

Sections 1221, 170 and 3304 of the Internal Revenue Code, referred to in pars. IX and X, are classified, respectively, to 26 USCS §§ 1221, 170 and 3304.

RSA 77-A:2-c, referred to in par. I, was repealed by 1998, 163:8, eff. July 1, 1998.

Revision note.

Pursuant to 1993, 350:42, eff. July 1, 1993, par. XXIV, as added by 1993, 313:10, was redesignated as par. XXIII-a.

Amendments

—2007. Paragraph XII: Rewrote the former first sentence as the present first and second sentences, and inserted “the employment of business assets” following “not limited to” in the present third sentence.

—2004. Paragraph I: Substituted “elects to be treated as a” for “is a” preceding “qualified investment company” and deleted “that is not taxable under RSA 77-A:2-c” following “RSA 77-A:1, XXI” in the fifth sentence and substituted “an organization electing to be treated as a” for “a” and deleted “that is not taxable under RSA 77-A:2-c” following “RSA 77-A:1, XXI” in the sixth sentence.

Paragraph XXI: Made minor stylistic changes in subpars. (a)(2) and (3) and deleted subpar. (a)(4), and rewrote subpar. (b).

Paragraphs XXIV and XXV: Repealed.

—2001. Paragraph XX(l): Added.

—1999. Paragraph XX(k): Added.

—1998. Chapter 105 added par. XX(j).

—1998. Chapter 163 rewrote pars. XXI, XXIV and XXV and repealed pars. XXVI-XXIX.

—1997. Paragraph XX(c): Inserted “and tax years ending before January 1, 1988” following “1986”.

Paragraph XX(d): Inserted “and tax years ending before January 1, 1989” following “1987”.

Paragraph XX(e): Inserted “and tax years ending before January 1, 1991” following “1988”.

Paragraph XX(f): Inserted “and tax years ending before January 1, 1993” following “1990”.

Paragraph XX(g): Inserted “and tax years ending before January 1, 1995” following “1992”.

Paragraph XX(h): Inserted “and tax years ending before January 1, 1997” following “1994”.

Paragraph XX(i): Added.

—1996. Paragraph XXI: Rewritten to the extent that a detailed comparison would be impracticable.

—1995. Paragraph XX(h): Added.

—1994. Paragraph I: Chapter 178 added the third sentence and inserted “except grantor trusts pursuant to section 671 of the United States Internal Revenue Code” preceding “S corporation” in the sixth sentence.

Paragraph XX(g): Added by ch. 326.

—1993. Paragraph I: Chapter 313 inserted “limited liability company” preceding “proprietorship” in the first sentence and following “partnership” in the fifth sentence.

Chapter 350 inserted “that is not taxable under RSA 77-A:2-c” following “RSA 77-A:1, XXI” in the fourth and fifth sentences.

Paragraph XXI: Chapter 350 inserted “an organization that is an investment company under the Investment Company Act of 1940 as amended” following “RSA 77-A:1, XX”.

Paragraph XXIV: Added by chs. 313 and 350.

Paragraphs XXIV-XXIX: Added by ch. 350.

—1991. Paragraph I: Chapter 67 added the fourth sentence and deleted “regulated investment company” following “investment trust” and inserted “other than a qualified investment company as defined in RSA 77-A:1, XXI” preceding “whose net income” in the fifth sentence.

Paragraph XII: Chapter 67 added the third sentence.

Paragraph XX: Chapter 362 made minor changes in phraseology in subpars. (b) and (c) and added subpars. (e) and (f).

Paragraph XXI: Added by ch. 67.

Paragraph XXII: Added by ch. 354.

Paragraph XXIII: Added by ch. 354.

—1989. Paragraph XX: Rewrote subpars. (a) and (b) and added subpars. (c) and (d).

—1988. Paragraph XX(b): Substituted “December 22, 1987” for “January 1, 1987” following “in effect on” in the first sentence.

—1987. Paragraph I: Substituted “as defined in RSA 77-A:1, XX” for “(1954) as amended” following “Revenue Code” in two places.

Paragraph III: Rewrote subpars. (a), (c), and (d) and substituted “as defined in RSA 77-A:1, XX” for “(1954) as amended” following “Revenue Code” in subpar. (f).

Paragraph IX: Substituted “as defined in RSA 77-A:1, XX” for “(1954) as amended” following “Revenue Code” in the introductory clause and in subpar. (a) in two places.

Paragraph X: Substituted “as defined in RSA 77-A:1, XX” for “(1954) as amended” following “Revenue Code” in the introductory clause and in subpar. (a) in two places.

Paragraph XIII: Substituted “as defined in RSA 77-A:1, XX” for “(1954) as amended” following “Revenue Code”.

Paragraph XX: Added.

—1986. Added par. III(f) and pars. XII-XIX.

—1985. Paragraph I: Added the second and third sentences.

Paragraph III(e): Deleted “or” preceding “estate” and inserted “or any other business organization” thereafter.

Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph XI: Added.

—1983. Paragraph III: Rewritten by ch. 318:1 to the extent that a detailed comparison would be impracticable.

Paragraph IV: Chapter 318:2 substituted “adjusted” for “reduced” following “profits”, inserted “additions and” preceding “deductions” and substituted “provided in” for “allowable under” thereafter, and made other minor stylistic changes.

Paragraph IX: Added by ch. 444.

Paragraph X: Added by ch. 444.

—1982. Paragraph III(a): Added “for plans of liquidation adopted after June 30, 1981” following “gains”.

—1981. Paragraph I: Deleted “sole” preceding “proprietorship”, “which is” preceding “organized”, “and which derives economic benefit from the employment of property or labor or both or from” preceding “carrying” and “and except such enterprises state taxation of which is limited by United States Code Chapter 12, section 548 as amended, so long as such limitation exists” following “(1954) as amended”.

Paragraph III: Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph VI: Rewritten to the extent that a detailed comparison would be impracticable.

—1979. Paragraph I: Inserted “or from carrying on any business activity” preceding “within the state”.

—1977. Paragraph III: Substituted in the unnumbered concluding paragraph “commissioner of revenue administration” and “commissioner” for “commission” as it appeared.

—1975. Paragraph III: Inserted “increased by any deduction taken on such return for a net income tax, a franchise tax measured by net income” following “on such return” in subpars. (a) and (b) and following “partnership” in subpar. (c) and inserted “or a capital stock tax assessed by any state or political subdivision” preceding “or in the case” in subpar. (a) and preceding “if it were not” in subpar. (b).

—1973. Chapter 544 rewrote par. II.

Chapter 579 substituted “apportionment” for “allocation” preceding “provided” in par. IV and added pars. VI-VIII.

—1971. Paragraph III(e): Deleted “capital” preceding “assets”.

Paragraph III(f): Deleted “engaging in trade or business” following “estate”, substituted “return” for “returns” following “tax”, inserted “income from rents and the net” following “plus the net”, deleted “capital” preceding “assets” and “such”

preceding "trade" and inserted "or for rental purposes" preceding "as shown" in the first paragraph and added the undesignated paragraph.

Effective date of amendments

—**1996, 154:7**, eff. July 1, 1996, provided: "Sections 1 and 2 of this act [which amended par. XXI of this section and RSA 77-E:1, XIV, respectively] shall not take effect until July 1, 1996, at the earliest and unless and until the United States Congress enacts 3(c)(7) of the Investment Company Act of 1940 [to be codified at 15 USCS § 80a-3(c)(7).]"

The National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, which includes the amendment of section 3(c)(7) of the Investment Company Act of 1940, was approved by Congress on October 1, 1996 and signed into law on October 11, 1996. Pursuant to Pub. L. No. 104-290, § 209(e), the amendment to the Investment Company Act of 1940, 15 USCS § 80a-3(c)(7), will take effect on the earlier of 180 days after the date of enactment [April 19, 1997] or the date on which the rulemaking required under Pub. L. No. 104-290 § 209(d)(2) is completed. Pub. L. No. 104-290 § 209(d)(2) provided: "Not later than 180 days after the date of enactment of this Act, the [Securities and Exchange] Commission shall prescribe rules defining the term, or otherwise identifying, 'investments' for purposes of section 2(a)(51) of the Investment Company Act of 1940, as added by this Act."

Purpose of 1986 amendment.

1986, 153:1, provided: "This act amends existing law by limiting the application of the business profits tax to the water's edge by eliminating overseas business organizations from subjection to this tax. However, it is not the intent of this legislation to alter those basic premises of New Hampshire taxation policies which follow the federal method of calculating taxable income, particularly when such policies or procedures are intended to further New Hampshire concerns with equal and proportional treatment of taxpayers."

Repeal of 1995, 188:5, II amendment.

1995, 188:5, II, eff. July 1, 1995, provided for the repeal of pars. XXII and XXIII of this section; however, 1995, 308:93, eff. June 30, 1995, amended 1995, 188:5 to delete the provisions repealing pars. XXII and XXIII.

Severability

—**1993, 350 amendment.** 1993, 350 was subject to a severability clause. See 1993, 350:40.

—**1991, 354 amendment.** 1991, 354:6, was subject to a severability clause. See 1991, 354:20, as amended by 1993, 49:8.

—**1986 amendments.** 1986, 153:7, I, provided: "If RSA 77-A:1, XV as inserted by section 3 of this act or the application thereof to any person or circumstance is found invalid, then RSA 77-A:1, XV shall read as follows and RSA 77-A:1, XIX shall be deemed repealed:

XV. 'Water's edge combined group' means a group of business organizations, as defined in RSA 77-A:1, operating as a unitary business either entirely within the United States, the District of Columbia, and United States possessions or territories, or within and without the 50 states, the District of Columbia, and United States possessions or territories."

1986, 153:7, II, provided: "If the provisions of paragraph I become operative because RSA 77-A:1, XV as inserted by section 3 of this act is invalid, and if RSA 77-A:1, XV as amended in paragraph I is also found invalid, then it is the intent of the legislature that sections 2-6 of this act [which added RSA 77-A:1 III(f) and XV-XIX, RSA 77-A:2-b, and RSA 77-A:3, IV and amended RSA 77-A:3, II and III and RSA 77-A:6, IV] be considered as a unit and that the provisions of sections 2-6 of this act be inseparable. If any provision of sections 2-6 of this act is declared unconstitutional, all of the provisions of sections 2-6 of this act shall be invalid, and the provisions of RSA 77-A as they existed prior to the enactment of this act shall apply."

1986, 153:7, III, provided: "If any provision of this act or the application thereof to any person or circumstance is held invalid, it is the intent of the legislature that the invalidity shall not affect section 8 of the act [which added RSA 77-A:1,

XII-XIV], and to this end the provisions of section 8 of this act are severable."

Applicability of 1991, 354 amendment.

1991, 354:21, V, eff. July 2, 1991, provided that section 6 of the act, which added pars. XXII and XXIII of this section, shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1992.

Applicability of 1989.

1989, 50:17, I, provided that 1989, 50:15, would apply to returns and taxes due on account of taxable periods ending after November 10, 1988.

Applicability of 1988.

1988, 23:7, provided that 1988, 23:6, would apply to returns and taxes due on account of taxable periods ending after December 22, 1987.

Applicability of 1986.

1986, 153:9, provided that 1986, 153:2, 3, 18, would apply to returns and taxes due on account of taxable periods beginning after June 30, 1986.

Applicability of 1983.

1983, 318:19, and 1983, 444:4, provided that 1983, 318:1, 2, and 1983, 444:1, would apply to returns and taxes due on account of taxable periods ending after June 30, 1983.

Applicability of 1998 amendment.

1998, 163:9, eff. July 1, 1998, provided that this act, which amended this section and RSA 77:4, 77-A:4, 77-E:1, enacted RSA 77:4-f and 77-A:5-b, and repealed RSA 77-A:2-c, shall apply for all taxable periods ending after June 30, 1998.

Transition period for repeal of subpar. XXI(a)(4) and pars. XXIV and XXV.

2004, 143:9, eff. May 24, 2004, provided: "The provisions of RSA 77:4, VI, RSA 77:4-f, II, RSA 77-A:1, XXI (a)(4), RSA 77-A:1, XXIV and XXV, RSA 77-A:4, XVIII, RSA 77-A:5-b, and RSA 77-E:1, XIV(a)(4) shall remain in effect as enacted prior to the effective date of this act [May 24, 2004], for companies that qualified for qualified investment capital company status and submitted a valid election therefor prior to the effective date of this act."

NOTES TO DECISIONS

1. Business organizations
2. Property
3. Gross business profits
4. Taxable income
5. Realization of gain
6. "Water's edge" apportionment

1. Business organizations

Holding company owning shares in other corporations, deriving its income from the dividends and capital gains earned on the shares and employing attorneys to handle its financial and legal matters owned "property," the shares, and derived "economic benefit from the employment of property or labor or both" and was thus a "business organization" and subject to this chapter. *Concord Investment Corporation v. New Hampshire Tax Commission*, 114 N.H. 105, 316 A.2d 192, 1974 N.H. LEXIS 218 (1974).

2. Property

"Property," as used in this section's definition of a "business organization," includes intangible property, such as stocks. *Concord Investment Corporation v. New Hampshire Tax Commission*, 114 N.H. 105, 316 A.2d 192, 1974 N.H. LEXIS 218 (1974).

3. Gross business profits

Under subparagraph III(a) of this section, the gross business profits of a real estate investment trust equal whatever amount appears on line 28 of the federal corporate income tax return. *Bradley Real Estate Trust v. Taylor*, 128 N.H. 441, 515 A.2d 1212, 1986 N.H. LEXIS 322 (1986).

Trial court did not err in construing the definition of gross business profits for a real estate investment trust for the fiscal

years 1977, 1978 and 1979 as not including dividends paid by the trust to its shareholders. *Bradley Real Estate Trust v. Taylor*, 128 N.H. 441, 515 A.2d 1212, 1986 N.H. LEXIS 322 (1986).

Agricultural land development rights are not assets held for use in business activities so as to be included in the definition of gross business profits under subparagraph III(d) of this section, since if such rights were in fact assets held for use in business activity, their sale or disposition would diminish or destroy the underlying business activity; however, nothing prevents the state from inquiring into the underlying business activity of the seller of development rights to see whether that seller is in the business of leasing land for non-agricultural purposes, and since such a seller would be disposing of an asset used as part of its overall business activities, the sale of such rights could be taxable under this chapter. *Jacobs v. Price*, 125 N.H. 196, 485 A.2d 282, 1984 N.H. LEXIS 405 (1984).

Subparagraph III(a) of this section, defining gross business profits, imports a legislative intent to incorporate by reference the federal income tax method of determining taxable income. *Shangri-La, Inc. v. State*, 113 N.H. 440, 309 A.2d 285, 1973 N.H. LEXIS 292 (1973).

4. Taxable income

By specifically defining partnership income subject to the business profits tax as that shown on the federal income tax return, the legislature wanted to foreclose the necessity of distinguishing between the different sources of income included in the return; the tax is not on distinct items, such as gains from the sale of property, but rather on net income, measured by the yardstick of the different categories of income included in the partnership's federal return. *Estate of Kennett v. State*, 115 N.H. 50, 333 A.2d 452, 1975 N.H. LEXIS 221 (1975).

Legislature's specific adoption of the federal income tax term of "taxable income" belies the view that it did not intend this chapter to apply the federal law's downward adjustments for depreciation prior to enactment of this chapter, for by adopting the term, the legislature levies a tax on income as federally defined and thereby incorporates federal adjustments to the basis used to arrive at "taxable income," and federal basis rules apply an adjusted basis existent before the effective date of a federal statute creating a tax on gain, if taxpayer realized gain after the effective date. *Shangri-La, Inc. v. State*, 113 N.H. 440, 309 A.2d 285, 1973 N.H. LEXIS 292 (1973).

5. Realization of gain

Where, for federal tax purposes, sales of land occurred when deeds were delivered to purchaser and recorded, the gain on the sales was realized at those times. *Estate of Kennett v. State*, 115 N.H. 50, 333 A.2d 452, 1975 N.H. LEXIS 221 (1975).

6. "Water's edge" apportionment

Apportionment formula found in State's business profits tax statute did not violate Commerce Clause of Federal Constitution in manner in which it taxed royalty and interest payments received from foreign subsidiaries of a unitary multinational business, since method treated foreign subsidiaries like similarly situated domestic entities and thus no discrimination against foreign subsidiaries occurred; royalty and interest payments by foreign members to domestic members of unitary business group were included as income of domestic members because they represented value earned by domestic members that was not otherwise captured, and there was no constitutional reason why such payments should be apportioned by a factor that included foreign payors' property, payroll, and sales. *Caterpillar Inc. v. New Hampshire Dep't of Revenue Admin.*, 144 N.H. 253, 741 A.2d 56, 1999 N.H. LEXIS 106 (1999), cert. denied, 529 U.S. 1021, 120 S. Ct. 1424, 146 L. Ed. 2d 315, 2000 U.S. LEXIS 1945 (2000).

Cited:

Cited in Johnson & Porter Realty Co. v. Commissioner of Revenue Administration, 122 N.H. 696, 448 A.2d 435, 1982 N.H. LEXIS 431 (1982); *Opinion of the Justices*, 123 N.H. 296, 460 A.2d 93, 1983 N.H. LEXIS 267 (1983); *Opinion of Justices*,

131 N.H. 640, 557 A.2d 273, 1989 N.H. LEXIS 38 (1989); *Opinion of Justices*, 132 N.H. 777, 584 A.2d 1342, 1990 N.H. LEXIS 139 (1990).

RESEARCH REFERENCES

ALR.

State income tax treatment of intangible holding companies. 11 A.L.R.6th 543.

77-A:2. Imposition of Tax.

A tax is imposed at the rate of 8.5 percent upon the taxable business profits of every business organization.

Source.

1979, 5:1. 1971, 515:14. 1977, 593:1. 1993, 350:8, eff. July 1, 1993; 350:9, eff. July 1, 1994. 1999, 17:19, eff. July 1, 1999. 2001, 158:19, eff. July 1, 2001.

Amendments

—2001. Substituted "8.5 percent" for "8 percent".

—1999. Substituted "8 percent" for "7 percent".

—1993. Chapter 350.8 substituted "7.5" for "8 percent". Chapter 350:9 substituted "7 percent" for "7.5 percent".

—1977. Substituted "8" for "seven" preceding "percent".

—1971. Substituted "seven" for "six" preceding "percent".

Severability

—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

Application of 1977 amendment.

1977, 593:7, I, provided that 1977, 593:1, would apply to returns and taxes due on account of taxable periods ending on or after July 1, 1977.

Applicability of 1993 amendment.

1993, 350:43, I, eff. July 1, 1993, provided that the amendment to this section by section 8 of the act shall apply to returns and taxes and reports and fees due on account of taxable periods ending on or after July 1, 1993; in the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the Internal Revenue Code, which is classified to 26 USCS 441(f), and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993, for the purposes of 1993, 350."

1993, 350:43, II, eff. July 1, 1993, provided: "Sections 9 and 11 of this act [which amended this section and RSA 77-A:3 respectively] shall take effect July 1, 1994, and shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1994. In the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code [which is classified to 26 USCS 26] and the fiscal year of which ends on the last day of the week nearest to June 30, 1994, the taxable period shall be deemed to have ended on June 30, 1994, for the purposes of this act."

Applicability of 1999.

1999, 17:59, I, effective July 1, 1999, provided that section 19 of this act, which amended this section, shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1999. In the case of any business organization or enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to June 30, 1999, the taxable period shall be deemed to have ended on June 30, 1999, for the purposes of this act.

Applicability of 2001 amendment.

2001, 158:28, eff. July 1, 2001, provided: "Sections 19 and 21 of this act [which amended this section and RSA 77-E:2],

shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 2001. In the case of any business organization or enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to June 30, 2001, the taxable period shall be deemed to have ended on June 30, 2001, for the purposes of this act."

Rate of Tax for Biennium Ending June 30, 1987.

1985, 408:1, eff. July 1, 1985, provided: "Notwithstanding the provisions of RSA 77-A:2, the tax imposed under RSA 77-A shall be imposed at the rate of 8.25 percent upon the taxable business profits of every business organization for the biennium ending June 30, 1987."

Three-year business transition credit.

1993, 350:39, eff. July 1, 1993, provided:

"I. There shall be allowed as a credit against the tax due under RSA 77-E for the first tax period ending on or after July 1, 1993, and each of the 2 succeeding tax periods an amount equal to the business enterprise's business transition loss amount. Any business transition loss amount which is not fully utilized as a credit under this section with respect to one tax period may be carried forward for use against tax due under RSA 77-E for later tax periods. The total amount of allowable business transition credit: (a) shall not exceed the total amount of taxes due and paid by the business enterprise under RSA 77-A for taxable periods ending on or after January 1, 1987, and ending on or before June 30, 1990.

"II. For purposes of this transition section, 'business transition loss amount' means the product of (a) the aggregate net operating loss carryover of a business enterprise determined pursuant to section 172 of the United States Internal Revenue Code attributable to taxable periods ending on or after June 1, 1991, and ending on or before June 30, 1992, and (b) with respect to each applicable taxable period, the rate of tax specified in RSA 77-A:2. In the case of a business enterprise which is not treated as a corporation under subchapter C of the United States Internal Revenue Code, 'business transition loss amount' shall be based on the amount that would be determined under section 172 of the United States Internal Revenue Code if the business enterprise were a C corporation. For purposes of this definition, a business enterprise's aggregate net operating loss carryover shall not exceed that amount which is allocated to this state by application of the apportionment method described in RSA 77-A:3. In addition, a business enterprise's aggregate net operating loss carryover shall not exceed that amount which was generated directly from operations of such business enterprise and not from operations of another enterprise which may be an affiliate. For purposes of this definition, the aggregate net operating loss carryover shall not be subject to the \$250,000 annual limitation established in RSA 77-A:4, XIII.

"III. Notwithstanding any other provision of RSA 77-A to the contrary, if a business organization applies the business transition credit to reduce tax due under RSA 77-E, the amount of net operating loss that may be carried forward under this section shall be reduced by an amount equal to (a) the amount of credit applied to reduce tax due under RSA 77-E, divided by (b) the rate of tax specified in RSA 77-A:2 and applied for purposes of determining the business transition loss amount for each applicable tax period under this transition section.

"IV. The amount allowed as credit pursuant to RSA 77-A:5, X, for taxes paid under RSA 77-E shall be reduced by the amount of business transition credit utilized as a credit against the tax due under RSA 77-E.

"V. For purposes of this section any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to the ending of any taxable period specified in this section shall be deemed to have ended on the last day of such taxable period."

1993, 350:43, I, eff. July 1, 1993, provided that 1993, 350:39, which is set out in this note above, shall apply to returns and taxes and reports and fees due on account of taxable periods ending on or after July 1, 1993; in the case of any business enterprise which has elected a 52-53 week

taxable period under section 441(f) of the Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993 for the purposes of 1993, 350.

Contingency; constitutional amendment; reenactment of laws.

1999, 17:57, eff. April 29, 1999, provided: "If voters of the state adopt an amendment to the New Hampshire Constitution which substantially relates to the role of the general court in determining the nature and means for funding public education, then the provisions of this act not relative to the education property tax shall be without effect as of July 1 following such adoption.

"If such constitutional amendment is adopted, the provisions of this act relative to the education property tax shall be without effect as of April 1 following such adoption.

"If such constitutional amendment is adopted, the rate of the real estate transfer tax in RSA 78-B:1, I shall revert to the rate imposed by section 32 of this act, unless specifically amended or repealed by an act of the legislature.

"Upon the proclamation of the adoption of such constitutional amendment, the director of legislative services is authorized to make changes to the Revised Statutes Annotated mentioned above."

Cross References.

Employment of water's edge method for determination of tax liability, see RSA 77-A:2-b.

Penalty for failure to make or making false return, see RSA 21-J:31, 39.

NOTES TO DECISIONS

1. Constitutional issues
2. Capital gains

1. Constitutional issues

An appropriate amendment to the state constitution is necessary before a statute can constitutionally provide for the taxation exclusively of corporate business profits, and this may not be done without consideration of the requirements of uniformity and proportionality contained in Article 5, Part II of the state constitution. *Estate of Kennett v. State*, 115 N.H. 50, 333 A.2d 452, 1975 N.H. LEXIS 221 (1975).

Corporations, which are a class of taxpayers, may not reasonably be classified as subjects of taxation constituting a "class of property," comparable to estates, income, or property passing by sale of inheritance, as permitted by Article 6, Part II, of the State Constitution. *Opinion of the Justices*, 111 N.H. 206, 278 A.2d 348, 1971 N.H. LEXIS 158 (1971).

If corporate income is to be taxed, the tax burden must be shared by others enjoying like privileges. *Opinion of the Justices*, 111 N.H. 206, 278 A.2d 348, 1971 N.H. LEXIS 158 (1971).

Income to be taxed may reasonably be classified as the gross income of individuals and the net income of businesses so as to permit employment of a different rate for the two classes of income, provided proportionality and uniformity is allowed for within each class. *Opinion of the Justices*, 111 N.H. 206, 278 A.2d 348, 1971 N.H. LEXIS 158 (1971).

2. Capital gains

Proposed tax on capital gains of individuals need not be at same rate as that imposed on business profits; however' legislature should give consideration to avoidance of double taxation of capital gains which could arise under proposed capital gains taxation and under business profits tax. *Opinion of the Justices*, 117 N.H. 512, 374 A.2d 964, 1977 N.H. LEXIS 367 (1977).

Cited:

Cited in *Johnson & Porter Realty Co. v. Commissioner of Revenue Administration*, 122 N.H. 696, 448 A.2d 435, 1982 N.H. LEXIS 431 (1982); *Opinion of the Justices*, 123 N.H. 296, 460 A.2d 93, 1983 N.H. LEXIS 267 (1983); *Jacobs v. Price*, 125 N.H. 196, 485 A.2d 282, 1984 N.H. LEXIS 405 (1984); *Opinion of Justices*, 132 N.H. 777, 584 A.2d 1342, 1990 N.H. LEXIS

139 (1990); *Caterpillar Inc. v. New Hampshire Dep't of Revenue Admin.*, 144 N.H. 253, 741 A.2d 56, 1999 N.H. LEXIS 106 (1999).

77-A:2-a. Minimum Tax Due.

[Repealed 1982, 42:70, eff. July 1, 1982.]

Former section(s).

Former RSA 77-A:2-a, relating to a minimum business tax, was derived from 1981, 568:65, II and 1982, 42:68, 69.

NOTES TO DECISIONS

ANNOTATIONS UNDER FORMER RSA 77-A:2-A

Constitutionality

This section was unconstitutional since the minimum tax it imposed — which applied to a distinct class of property — was not uniform or proportional, but rather was regressive and graduated, the state had failed to demonstrate how the class of property taxed under this section was different from the class of property taxed under the regular business profits tax, RSA 77-A:2, and, no just reason existed to tax property under the minimum tax at a higher rate than the property under the regular business profits tax. *Johnson & Porter Realty Co. v. Commissioner of Revenue Administration*, 122 N.H. 696, 448 A.2d 435, 1982 N.H. LEXIS 431 (1982).

77-A:2-b. Conditions for Employment of Only Water's Edge Combination.

I. The commissioner shall determine liability for any business organization subject to the tax imposed under RSA 77-A:2 for the elements of both tax base and apportionment by the water's edge method except as provided in paragraph II.

II. The commissioner shall not be compelled to apply the water's edge method if the taxpayer fails to comply with the rules adopted by the department of revenue administration or the procedural requirements of RSA 77-A.

Source.

1986, 153:4, eff. July 1, 1986.

Purpose.

1986, 153:1, provided: "This act amends existing law by limiting the application of the business profits tax to the water's edge by eliminating overseas business organizations from subjection to this tax. However, it is not the intent of this legislation to alter those basic premises of New Hampshire taxation policies which follow the federal method of calculating taxable income, particularly when such policies or procedures are intended to further New Hampshire concerns with equal and proportional treatment of taxpayers."

Applicability of enactment.

1986, 153:9, provided that this section would apply to returns and taxes due on account of taxable periods beginning after June 30, 1986.

NOTES TO DECISIONS

Cited:

Cited in *Caterpillar Inc. v. New Hampshire Dep't of Revenue Admin.*, 144 N.H. 253, 741 A.2d 56, 1999 N.H. LEXIS 106 (1999).

77-A:2-c. Tax on Qualified Venture Capital Fund.

[Repealed 1998, 163:8, eff. July 1, 1998.]

Former section(s).

Former RSA 77-A:2-c, relating to the tax on qualified venture capital funds, was derived from 1993, 350:10.

77-A:3. Apportionment.

I. A business organization which derives gross business profits from business activity both within and without this state, and which is subject to a net income tax, a franchise tax measured by net income, or a capital stock tax in another state or is subject to the jurisdiction of another state to impose a net income tax or capital stock tax upon it, whether or not such tax is actually imposed, shall apportion its gross business profits so as to allocate to this state a fair and equitable proportion of such business profits. Except as provided in this section, such apportionment shall be made on the basis of the following 3 factors:

(a) The percentage of value of the total real and tangible personal property owned, rented and employed by the business organization everywhere as is owned, rented and employed by it in the operation of its business in this state. Property owned by the business organization shall be valued at its original cost. Property rented by the business organization shall be valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the business organization less any annual rental rate received by the business organization from subrentals.

(b) The percentage of total compensation paid by the business organization to employees everywhere as is paid by the business organization to employees for services rendered within this state. Such compensation is deemed to be disbursed for services in this state if the service is performed entirely within this state, or if the service is performed both within and without this state and the service performed without this state is incidental to the service within this state, or some of the service is performed in this state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual performing such service resides within this state.

(c) The percentage of the total sales, including charges for services, made by the business organization everywhere as is made by it within this state. Sales of tangible personal property are made in this state if the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of f.o.b. point or other conditions of sale, or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and (1) the purchaser is the United States government, or (2) the business

organization is not taxable in the state of the purchaser. Sales other than sales of tangible personal property are in this state if the income-producing activity is performed in this state, or the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

II. (a) A fraction, the numerator of which shall be the property factor in subparagraph I(a) plus the compensation factor in subparagraph I(b) plus 2 multiplied by the sales factor in subparagraph I(c) and the denominator of which is 4, shall be applied to the total gross business profits (less foreign dividends) of the business organization to ascertain its gross business profits in this state. If this method of apportionment does not fairly represent the business organization's business activity in this state, the business organization may petition for, or the commissioner may require, in respect to all or any part of the business organization's business activity, if reasonable:

(1) The exclusion of any one or more of the apportionment factors;

(2) The inclusion of one or more additional apportionment factors which will fairly represent the business organization's business activity in the state; or

(3) The employment of any other method to effect an equitable apportionment of the business organization's gross business profits.

(b) For foreign dividends from unitary sources, the following formula shall be used to modify factors relating to included dividends:

(1) Determine a percentage for each dividend payor consisting of dividends paid divided by taxable income which has been computed using United States standards.

(2) Apply this percentage to the dividend payor's foreign property, payroll, and sales.

(3) Sum the results in subparagraph (2) for all dividend payors.

(4) Add the result in subparagraph (3) to the denominators of the combined water's edge group. The numerator will remain the New Hampshire numerator.

(5) Apply the resulting percentage to the foreign dividends.

(6) Add this amount to the amount of New Hampshire taxable business profits computed pursuant to RSA 77-A:3, I and II(a).

III. When 2 or more related business organizations are engaged in a unitary business, as defined in RSA 77-A:1, XIV, a part of which is conducted in this state by one or more members of the group, the income attributable to this state shall be determined by means of the combined apportionment factors of the unitary

business group in accordance with paragraphs I and II.

IV. The business organization is entitled to a hearing by the commissioner on request in connection with any change in its apportionment procedure and has the right of appeal from the commissioner's determination as provided in RSA 21-J:28-b.

Source.

1970, 5:1. 1971, 515:3. 1973, 544:9. 1979, 446:2, 3. 1981, 445:4. 1986, 153:5. 1991, 163:16; 354:7, 16. 1993, 350:11, eff. July 1, 1994; 350:12, eff. July 1, 1999. 1999, 346:2, eff. July 1, 1999.

Amendments

—1999. Paragraph II(a): Chapter 346:2 substituted "plus 2 multiplied" for "plus 1.5 multiplied" and "denominator of which is 4" for "denominator of which is 3.5" in the first sentence of the introductory paragraph.

—1993. Paragraph II(a): Chapter 350:11 substituted "2.0" for "1.5" preceding "multiplied" and "4" for "3.5" preceding "shall be applied" in the first sentence of the introductory paragraph.

Chapter 350:12 substituted "1.5" for "2.0" preceding "multiplied" and "3.5" for "4" preceding "shall be applied" in the first sentence of the introductory paragraph.

—1991. Paragraph I: Chapter 354 deleted "equal weight to be given to each" following "factors" in the second sentence of the introductory paragraph.

Paragraph II(a): Chapter 354 rewrote the first sentence.

Paragraph IV: Chapter 163 substituted "RSA 21-J:28-b" for "RSA 77-A:14" following "provided in".

—1986. Rewrote pars. II and III and added par. IV.

—1981. Rewritten to the extent that a detailed comparison would be impracticable.

—1979. Paragraph I: Inserted "owned, rented or" preceding "employed" in two places in the first sentence and added the second and third sentences.

Paragraph II: In the first sentence, substituted "total compensation paid" for "the total wages, salaries, commissions and bonuses disbursed" and deleted "and salesmen everywhere as is disbursed by it for services" preceding "rendered within this state".

—1973. Paragraph III: Substituted "commissioner" for "commission" preceding "may require" in the fifth sentence and in two places in the sixth sentence.

—1971. Rewrote the introductory paragraph and the fifth and sixth sentences of par. III.

Purpose of 1986 amendment

1986, 153:1, provided: "This act amends existing law by limiting the application of the business profits tax to the water's edge by eliminating overseas business organizations from subjection to this tax. However, it is not the intent of this legislation to alter those basic premises of New Hampshire taxation policies which follow the federal method of calculating taxable income, particularly when such policies or procedures are intended to further New Hampshire concerns with equal and proportional treatment of taxpayers."

Severability

—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

—1991, 354 amendments. 1991, 354:7, 16, were subject to a severability clause. See 1991, 354:20, as amended by 1993, 49:8.

Applicability of 1993 amendment.

1993, 350:43, VI, eff. July 1, 1993, provided that the amendment to par. II(a) of this section by section 12 of the act shall apply to returns and taxes due on account of taxable

periods ending on or after July 1, 1999; in the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code, which is classified to 26 USCS 441, and the fiscal year of which ends on the last day of the week nearest to June 30, 1999, the taxable period shall be deemed to have ended on June 30, 1999, for the purposes of this act.

Applicability of 1991, 354:7 amendment.

1991, 354:21, VI. eff. July 2, 1991, provided that section 7 of this act, which amended par. II(a) of this section, shall apply to returns and taxes due on account of taxable periods ending on or after December 31, 1991.

Applicability of 1986.

1986, 153:9, provided that 1986, 153:5, would apply to returns and taxes due on account of taxable periods beginning after June 30, 1986.

Applicability of 1999 amendment.

1999, 346:3, provided: "This act [which amended par. II(a) of this section] shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1999."

NOTES TO DECISIONS

1. Constitutionality
2. Purpose
3. Construction
4. Entitlement to apportionment
5. Compensation
6. Sales
7. Taxable income
8. Alternative formula
9. Burden of proof
10. Evidence

1. Constitutionality

Apportionment formula found in State's business profits tax statute did not violate Commerce Clause of Federal Constitution in manner in which it taxed royalty and interest payments received from foreign subsidiaries of a unitary multinational business, since method treated foreign subsidiaries like similarly situated domestic entities and thus no discrimination against foreign subsidiaries occurred; royalty and interest payments by foreign members to domestic members of unitary business group were included as income of domestic members because they represented value earned by domestic members that was not otherwise captured, and there was no constitutional reason why such payments should be apportioned by a factor that included foreign payors' property, payroll, and sales. *Caterpillar Inc. v. New Hampshire Dep't of Revenue Admin.*, 144 N.H. 253, 741 A.2d 56, 1999 N.H. LEXIS 106 (1999), cert. denied, 529 U.S. 1021, 120 S. Ct. 1424, 146 L. Ed. 2d 315, 2000 U.S. LEXIS 1945 (2000).

This section does not deprive taxpayer-manufacturer of knitting machines; a Delaware corporation qualified to do business in this and other states, with its principal business office and sole manufacturing plant located in this state and sales office in New York City and a sales office and warehouse in North Carolina, which during tax years in question also made sales to other states and to foreign countries either directly or through a wholly owned subsidiary in Belgium, of its property without due process, is not an undue burden on interstate commerce, does not violate the equal protection clause, and its "throwback rule" is not unconstitutionally vague. *Scott & Williams, Inc. v. Board of Taxation*, 117 N.H. 189, 372 A.2d 1305, 1977 N.H. LEXIS 299 (1977).

Record-keeping burden, if it exists, required of multi-state business organizations for purposes of apportionment formulas, does not render unconstitutional the apportionment formula contained in this section, and because plaintiff, not board of taxation, is in best position to determine extent and nature of its business activity in other states, burden is properly placed on plaintiff to produce evidence that it is taxed or taxable in the states where its sales are delivered. *Scott & Williams, Inc. v. Board of Taxation*, 117 N.H. 189, 372 A.2d 1305, 1977 N.H. LEXIS 299 (1977).

If a business takes advantage of opportunities provided by another state to conduct activities which either are beyond

mere solicitation of orders, or are otherwise sufficient to provide a taxing nexus, it comes within the jurisdiction of that state to impose a tax, and income from those sales would not be attributed to the activities of the business in this state when determining percentage of sales factor under this section; and the throwback provision does not render the apportionment portion of the business profits tax act under this chapter unconstitutionally vague. *Scott & Williams, Inc. v. Board of Taxation*, 117 N.H. 189, 372 A.2d 1305, 1977 N.H. LEXIS 299 (1977).

Use of a federal definition of taxability for determining which businesses are taxable in the state of the purchaser does not violate New Hampshire Constitution; such a definition is appropriate in view of the objectives of income apportionment among states, and since there are statutory standards for determining taxability, the "throwback rule" under this section does not constitute an excessive delegation of authority to commissioner of revenue administration. *Scott & Williams, Inc. v. Board of Taxation*, 117 N.H. 189, 372 A.2d 1305, 1977 N.H. LEXIS 299 (1977).

The operation of the sales "throwback" provision of this section does not depend on the various tax laws of other states, but upon whether or not a business has sufficient contact with state of purchaser to bring it within the taxing jurisdiction of that state; and no precise standards for determining when a state may impose an income or capital stock tax have been articulated, but the minimum requirement for constitutional taxation by a state is determined by the question of whether a state has given anything for which it can ask return. *Scott & Williams, Inc. v. Board of Taxation*, 117 N.H. 189, 372 A.2d 1305, 1977 N.H. LEXIS 299 (1977).

In taxing a corporation doing business in more than one state, assumption is made that all the income is reasonably related to the business activity in the state, because the business is a unitary one, but if any part of the total income is not so related and may be identified, taxing any part of it would violate due process. *Johns-Manville Products Corp. v. Commissioner of Revenue Administration*, 115 N.H. 428, 343 A.2d 221, 1975 N.H. LEXIS 328 (1975), appeal dismissed, 423 U.S. 1069, 96 S. Ct. 851, 47 L. Ed.2d 79, 1976 U.S. LEXIS 1128 (1976).

2. Purpose

In this section, designed to measure that portion of the taxpayer's activities which take place within the state so that a proper allocation of the taxpayer's tax liabilities can be made, the express purpose of the allocation formula is to apportion a fair and equitable portion of the taxpayer's business profits to New Hampshire. *Pandora Industries v. Department of Revenue Administration*, 118 N.H. 891, 395 A.2d 1241, 1978 N.H. LEXIS 314 (1978).

3. Construction

Disputed language in this section which allows certain business organizations to allocate their gross business profits between New Hampshire and elsewhere by means of a three-factor allocation formula must be viewed within the context of the whole statute and in relation to the purpose of the allocation formula. *Pandora Industries v. Department of Revenue Administration*, 118 N.H. 891, 395 A.2d 1241, 1978 N.H. LEXIS 314 (1978).

4. Entitlement to apportionment

Where Delaware corporation, whose commercial domicile was in New Hampshire, had not claimed that it was subject to any income tax in Delaware or in any other state that would have subjected it to double taxation, corporation could not apportion its income under this section. *Richardson Ins. Management, Inc. v. Board of Taxation*, 119 N.H. 159, 399 A.2d 968, 1979 N.H. LEXIS 261 (1979).

Multistate business organization which had its principal place of business in New Hampshire and which sold products in and out-of-state was entitled to apportion its revenues between New Hampshire and the other states for the purpose of measuring the business profit attributable to and subject to taxation in New Hampshire. *Pandora Industries v. Department of Revenue Administration*, 118 N.H. 891, 395 A.2d 1241, 1978 N.H. LEXIS 314 (1978).

5. Compensation

Commissions paid by multistate business organization with principal place of business in New Hampshire to out-of-state salesmen working as independent contractors were not to be included in calculating the payroll factor under allocation formula set forth in this section's provision allowing certain business organizations to allocate their gross business profits between New Hampshire and other states for the purpose of measuring the business profit attributable to and subject to taxation in New Hampshire. *Pandora Industries v. Department of Revenue Administration*, 118 N.H. 891, 395 A.2d 1241, 1978 N.H. LEXIS 314 (1978).

Wages, salaries, commissions and bonuses disbursed were included in this section allowing certain business organizations to allocate their gross business profits between New Hampshire and elsewhere by means of a three-factor allocation formula not for the purpose of arriving at a net income figure, but rather for the purpose of measuring the amount of business activity based upon the payroll factor that is allocable to the state; payment of commissions to out-of-state salesmen working as independent contractors would be irrelevant to allocation formula because it would have no bearing on the amount of activity engaged in by the taxpayer within New Hampshire. *Pandora Industries v. Department of Revenue Administration*, 118 N.H. 891, 395 A.2d 1241, 1978 N.H. LEXIS 314 (1978).

6. Sales

Term "state" contained in this section includes foreign countries, and the sales "throwback rule" applies to sales delivered in foreign countries and where there is nothing in record on appeal regarding the taxing powers of those foreign countries where taxpayer delivers its products remand is required for determination of whether taxpayer is taxable in any of the states or foreign countries where it makes sales. *Scott & Williams, Inc. v. Board of Taxation*, 117 N.H. 189, 372 A.2d 1305, 1977 N.H. LEXIS 299 (1977).

Sales factor provided for by this section is used in recognition of fact that state which provides a market for a product is entitled to some tax returns on income which it has helped to produce, but if state where products are delivered has not provided benefits sufficient to entitle it to tax any portion of the business' income, then it is proper to attribute the production of income from those sales entirely to state or states which have provided protection and opportunities to the business throughout the manufacturing process up to point of shipment to purchaser. *Scott & Williams, Inc. v. Board of Taxation*, 117 N.H. 189, 372 A.2d 1305, 1977 N.H. LEXIS 299 (1977).

Allocation of sales to this state, the state of shipment, under the "throwback rule" provided by this section, when the sales are not taxable in the purchaser's state, does not constitute taxation of extraterritorial values, but rather, is an allocation of those sales to the state most entitled to levy a tax return for the opportunities, protections and benefits which it has afforded the taxpayer. *Scott & Williams, Inc. v. Board of Taxation*, 117 N.H. 189, 372 A.2d 1305, 1977 N.H. LEXIS 299 (1977).

This section measures and compares activity in the state of the origin of shipment to activity in the state of destination of shipment and these sales are thrown back to the point of origin in New Hampshire if the business organization is not taxable in the state of the purchaser. *N.J. Machine of N.H., Inc. v. Department of Revenue Administration*, 117 N.H. 262, 372 A.2d 604, N.H. LEXIS 312 (1977).

Under this section, the place of contract is not a relevant consideration and when goods are shipped to a purchaser located in New Hampshire, those sales are all allocated to this state regardless of f.o.b. point or other conditions of sale and when goods are shipped from within New Hampshire to purchasers in other states, those sales are also allocated to this state if the business organization is not taxable in the state of the purchaser. *N.J. Machine of N.H., Inc. v. Department of Revenue Administration*, 117 N.H. 262, 372 A.2d 604, N.H. LEXIS 312 (1977).

Although all orders for products manufactured in this state by subsidiary corporation with principal place of business in this state were placed with parent New Jersey corporation, and payments for products were made to parent corporation,

which in turn paid subsidiary, under the provisions of this section, the "state of the purchaser" was the state where the ultimate purchasers were located and not New Jersey where the parent corporation was located. *N.J. Machine of N.H., Inc. v. Department of Revenue Administration*, 117 N.H. 262, 372 A.2d 604, N.H. LEXIS 312 (1977).

Where Mississippi timberland was acquired and used for the purpose of supplying plaintiff's business needs and was held for the business purpose of generating profits after it could no longer be used to supply business needs and was sold for its failure to produce adequate rate of return, allocable portion of the gain from the sale of timberland was properly included in corporation's business profits tax liability. *Johns-Manville Products Corp. v. Commissioner of Revenue Administration*, 115 N.H. 428, 343 A.2d 221, 1975 N.H. LEXIS 328 (1975), appeal dismissed, 423 U.S. 1069, 96 S. Ct. 851, 47 L. Ed.2d 79, 1976 U.S. LEXIS 1128 (1976).

7. Taxable income

Corporation conducting business both within and without a state may be taxed by that state on the basis of that part of the corporation's total income as is attributable to the taxing state determined by a three-factor formula based on the percentage which real and personal property, payroll and sales in the state bear to the same factors everywhere. *Johns-Manville Products Corp. v. Commissioner of Revenue Administration*, 115 N.H. 428, 343 A.2d 221, 1975 N.H. LEXIS 328 (1975), appeal dismissed, 423 U.S. 1069, 96 S. Ct. 851, 47 L. Ed.2d 79, 1976 U.S. LEXIS 1128 (1976).

8. Alternative formula

Under this section, party wanting to use alternative formula has burden of showing that alternative is appropriate, and merely because use of alternative form of computation produces higher business activity attributable to New Hampshire is not in and of itself sufficient reason for deviating from legislatively mandated formula. *St. Johnsbury Trucking Co. v. State*, 118 N.H. 209, 385 A.2d 215, 1978 N.H. LEXIS 382 (1978).

Before alternative method of apportionment can be utilized, commissioner of department of revenue administration must first find that statutory method of apportionment does not fairly represent taxpayer's business activity in New Hampshire. *St. Johnsbury Trucking Co. v. State*, 118 N.H. 209, 385 A.2d 215, 1978 N.H. LEXIS 382 (1978).

Where opinion of board of taxation did not state any findings of basic fact to support conclusion that statutory standard of unfair apportionment had been met, which would allow use of alternative formula in assessing business profits taxes of trucking company having interstate operations in eight states, including New Hampshire, board's decision using modified apportionment formula to assess additional business profits taxes would not be upheld. *St. Johnsbury Trucking Co. v. State*, 118 N.H. 209, 385 A.2d 215, 1978 N.H. LEXIS 382 (1978).

Where it was unclear from opinion of board of taxation whether burden of proof had been placed on proper party, i.e., commissioner of department of revenue administration, in action concluding that statutory standard of unfair apportionment had been met, which would allow use of alternative formula in assessing business profits taxes of trucking company having interstate operations in eight states, including New Hampshire, matter would be remanded to board for findings setting forth in sufficient detail facts upon which board concluded that statutory formula did not fairly reflect extent of company's business activities in New Hampshire. *St. Johnsbury Trucking Co. v. State*, 118 N.H. 209, 385 A.2d 215, 1978 N.H. LEXIS 382 (1978).

Where trucking company having interstate operations in eight states, including New Hampshire, appealed from decision of board of taxation assessing additional business profits taxes against company and affirming determination of commissioner of department of revenue administration that modified apportionment formula should be used, relief clause allowing use of modified apportionment formula was to be used only if statutory test was met, and not for convenience of commissioner, and in light of availability of appropriate remedies if taxpayer refused to supply necessary information for statutory calculations, fact that company failed to supply

such information did not justify board's use of relief clause. *St. Johnsbury Trucking Co. v. State*, 118 N.H. 209, 385 A.2d 215, 1978 N.H. LEXIS 382 (1978).

9. Burden of proof

Burden is on party contesting business profits tax to show that it is taxable in the states of the ultimate purchaser in order that sales not be "thrown back" to New Hampshire under this section. *N.J. Machine of N.H., Inc. v. Department of Revenue Administration*, 117 N.H. 262, 372 A.2d 604, N.H. LEXIS 312 (1977).

10. Evidence

Under provision of this section entitling corporation with sales in foreign countries to apportion some of its taxable business profits, it is insufficient to show that foreign countries have the power to tax, and corporation must demonstrate that it is taxable in the foreign country in which it sells products in order to receive the benefit from the throwback provision. *Scott & Williams, Inc. v. Board of Taxation*, 119 N.H. 184, 400 A.2d 786, 1979 N.H. LEXIS 279 (1979).

Where corporate taxpayer seeking benefit of throwback provision of this section presented no evidence of actual jurisdictional standards for taxation in the foreign countries in which it did business or evidence that it came within such jurisdictional standards and was therefore subject to the tax jurisdiction of any foreign country, corporation's appeal from decision of board of taxation upholding an assessment of additional business profits tax by the department of revenue administration was properly dismissed. *Scott & Williams, Inc. v. Board of Taxation*, 119 N.H. 184, 400 A.2d 786, 1979 N.H. LEXIS 279 (1979).

Cited:

Cited in Opinion of the Justices, 123 N.H. 296, 460 A.2d 93, 1983 N.H. LEXIS 267 (1983); *Jacobs v. Price*, 125 N.H. 196, 485 A.2d 282, 1984 N.H. LEXIS 405 (1984); Opinion of the Justices, 128 N.H. 1, 509 A.2d 734, 1986 N.H. LEXIS 246 (1986).

RESEARCH REFERENCES

ALR.

State corporate income taxation of foreign dividends. 17 A.L.R.6th 623.

77-A:4. Additions and Deductions.

The following adjustments shall be made to gross business profits in determining taxable business profits:

I. In the case of a business organization which is subject to taxation under RSA 77, a deduction of such amount of gross business profits as is attributable to income which is taxable or is specifically exempted from taxation under RSA 77.

II. A deduction of such amount of gross business profits as is attributable to income derived from interest on notes, bonds or other securities of the United States.

III. (a) In the case of a proprietorship or partnership, a deduction equal to a fair and reasonable compensation for the personal services of the proprietor or partners actually devoting time and effort in the operation of the business organization. The purpose of this paragraph is to permit deduction from gross business profits of a proprietorship or partnership only of such amounts as are fairly attributable to the personal services of the proprietor or partners who are natural persons, but not to

permit deduction of any amounts as are fairly attributable to a return on business assets or the labor of non-owner employees of the business organization. The burden shall be upon the business organization filing the return to demonstrate the reasonableness of a deduction claimed under this paragraph, by a preponderance of the evidence. In considering the reasonableness of a deduction claimed under this paragraph, the commissioner shall consider the claimed deduction in light of compensation for personal services of employees in positions requiring similar responsibility, devotion of time, education and experience in business organizations of similar size, volume and complexity. In addition, the commissioner shall take into account the value to the business organization of the labor of its non-owner employees, and the use of the business assets of the business organization and any other factor which may reasonably assist the commissioner in making a determination as to the reasonableness of the claimed deduction.

(b) The amount of any deduction claimed under subparagraph (a) shall not exceed the amount reported as earned income from the activities of the business organization as reflected on the federal income tax returns of the proprietor or partner rendering such personal services, but may also include an amount not to exceed net rental income as compensation for operating rental property, and an amount not to exceed 15 percent of the gross selling price as commissions on the sale of business assets. Provided, however, a minimum deduction of \$6,000 shall be allowed on account of the proprietor or each partner who is a natural person actually devoting time and effort in the operation of the business organization.

IV-VI. [Repealed.]

VII. In the case of a business organization which takes any deduction for a net income tax, a franchise tax measured by net income, or a capital stock tax assessed by any state or political subdivision, an addition to gross business profits for the amount of all such deductions.

VIII. In the case of a corporation, having adopted a plan of liquidation subsequent to June 30, 1981, which has a nonrecognized gain as a result of the application of the United States Internal Revenue Code (1954) section 337, as amended, or meets the exception requirements allowing the federal nonrecognition provisions of section 337 as provided in section 633 of the Tax Reform Act of 1986, an addition to gross business profits for the amount of such gain.

IX. In the case of a business organization required to adjust a portion of its wages under section 280C of the United States Internal Revenue Code as defined in RSA 77-A:1, XX, a deduction from gross business profits in the amount of such adjustment.

X. In the case of a business organization which excludes any portion of its gross business profits pursuant to federal constitutional law, an addition to gross business profits for the amount of any deducted expenses related to such excluded portion.

XI. A deduction of such amount of gross business profits as is attributable to foreign dividend gross-up as determined in accordance with section 78 of the United States Internal Revenue Code as defined in RSA 77-A:1, XX.

XII. In the case of a business organization which makes qualified charitable contributions as defined in RSA 77-A:1, IX, or qualified research contributions as defined in RSA 77-A:1, X, the gross business profits of the organization shall be adjusted by:

(a) Adding to gross business profits the amount deducted under section 170 of the United States Internal Revenue Code as defined in RSA 77-A:1, XX in arriving at federal taxable income; and

(b) Deducting from gross business profits an amount equal to the sum of the taxpayer's basis in the contributed property plus 50 percent of the unrealized appreciation, or twice the basis of the property, whichever is less.

XIII. A deduction for the amount of the net operating loss carryover determined under section 172 of the United States Internal Revenue Code in effect on December 31, 1996. A net operating loss shall be apportioned in the year incurred according to RSA 77-A:3. Net operating losses may only be carried forward for the 10 years following the loss year. For taxable periods ending:

(a) On or before June 30, 2003, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$250,000.

(b) On or after July 1, 2003 and on or before June 30, 2004, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$500,000.

(c) On or after July 1, 2004 and on or before June 30, 2005, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$750,000.

(d) On or after July 1, 2005, the amount of net operating loss generated in a tax year that may be carried forward may not exceed \$1,000,000.

In the case of a business organization not qualifying for treatment as a subchapter C corporation under the United States Internal Revenue Code, such deduction shall be the amount that would be determined under section 172 of the United States Internal Revenue Code in effect on December 31, 1996 if the business organization were a subchapter C corporation and as limited by this section. A deduction for the amount of the net operating loss carryover shall be limited to losses incurred on or after July 1, 1997.

XIV. In the case of a business organization where an interest or beneficial interest in the organization has been sold or exchanged, an addition to gross business profits of an amount equal to the net increase in the basis of all underlying assets transferred or sold through the sale or exchange of the interest. The increase in the basis of the assets shall be determined in accordance with the provisions of the Internal Revenue Code as defined by RSA 77-A:1, XX.

XV. In the case of a business organization that is a holder of an ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI, an addition to gross business profits of an amount equal to the holder's proportional share of profits of the qualified investment company, computed as if the qualified investment company were a business organization subject to tax under RSA 77-A. No portion of any actual distributions made to such holder by such qualified investment company that would otherwise be part of taxable business profits shall be included in such holder's gross business profits.

XVI. In the case of a business organization that receives assistance payments under 12 U.S.C. section 1823, a deduction from gross business profits of an amount equal to the sum of such assistance.

XVII-XVIII. [Repealed.]

Source.

1970, 5:1. 1971, 360:1; 515:4, 15. 1972, 63:25. 1973, 403:1; 544:9. 1975, 439:37; 503:1. 1977, 593:2. 1981, 445:5-7. 1983, 318:3; 444:2. 1987, 407:1, 5, 6. 1988, 199:1, 2. 1989, 168:2. 1991, 67:12; 354:8. 1992, 13:6. 1993, 350:13, 14, eff. July 1, 1993. 1998, 105:3, eff. Aug. 1, 1998; 163:5, eff. July 1, 1998. 2002, 211:1, eff. July 1, 2002. 2003, 203:1, eff. July 1, 2005. 2004, 143:4, 8, IV, eff. May 24, 2004. 2007, 146:1, I-III, eff. August 17, 2007.

References in text.

Chapter 6 of the Internal Revenue Code, referred to in par. IV, is classified to 26 U.S.C.S. §§ 1501-1505, 1551-1564.

Sections 992 and 995 of the Internal Revenue Code, referred to in par. VI, are classified, respectively, to 26 U.S.C.S. §§ 992 and 995.

Section 337 of the Internal Revenue Code, referred to in par. VIII, is classified to 26 U.S.C.S. § 337.

Section 633 of the Tax Reform Act of 1986, referred to in par. VIII, is not classified to the United States Code. The provision appears at 100 Stat. 2277-2282.

Section 280C of the Internal Revenue Code, referred to in par. IX, is classified to 26 U.S.C.S. § 280C.

Section 78 of the Internal Revenue Code, referred to in par. XI, is classified to 26 U.S.C.S. § 78.

Section 170 of the Internal Revenue Code, referred to in subpar. XII(a), is classified to 26 U.S.C.S. § 170.

Section 172 of the Internal Revenue Code, referred to in par. XIII, is classified to 26 U.S.C.S. § 172.

Revision note.

Paragraph XII, which was enacted as par. VIII by 1983, 444:2, was redesignated to avoid confusion with par. VIII as added by 1983, 318:3.

Amendments

—2007. Paragraphs IV-VI: Repealed.

—2004. Paragraph XV: Substituted "no portion of any actual distributions" for "such a holder shall deduct from gross business profits that portion of actual distributions" and

added "shall be included in such holder's gross business profits" in the second sentence.

Paragraphs XVII and XVIII: Repealed.

—2003. Paragraph XIII: Deleted the proviso in the second sentence of the introductory paragraph.

—2002. Paragraph XIII: Rewritten to the extent that a detailed comparison would be impracticable.

—1998. Paragraph XIII: Chapter 105 substituted "in effect on December 31, 1996" for "as defined in RSA 77-A:1, XX" in two places in the first sentence, and in the fourth sentence.

Paragraph XVII: Chapter 163 inserted "cash" preceding "contribution" and substituted "qualified investment capital company" for "qualifying venture capital fund".

Paragraph XVIII: Chapter 163 substituted "qualified investment capital company" for "qualifying venture capital fund".

—1993. Rewrote par. X and added pars. XVII and XVIII.

—1992. Paragraph III(b): Substituted "however" for "that subject to the preceding sentence" following "provided" in the second sentence.

—1991. Paragraph III: Rewritten by ch. 354 to the extent that a detailed comparison would be impracticable.

Paragraph XV: Added by ch. 67.

Paragraph XVI: Added by ch. 67.

—1989. Paragraph XIV: Added.

—1988. Paragraph III: Added the third sentence.
Paragraph XIII: Added.

—1987. Paragraph IV: Substituted "as defined in RSA 77-A:1, XX" for "(1954) as amended" following "Revenue Code" in the first sentence.

Paragraph VI: Substituted "as defined in RSA 77-A:1, XX" for "(1954), as amended" preceding "a deduction" and for "of (1954), as amended" preceding "if the profits" in the first sentence.

Paragraph VIII: Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph IX: Substituted "section 280C of the United States Internal Revenue Code as defined in RSA 77-A:1, XX" for "the United States Internal Revenue Code (1954) section 280C, as amended".

Paragraph XI: Substituted "as defined in RSA 77-A:1, XX" for "(1954) as amended" following "Revenue Code".

Paragraph XII(a): Substituted "as defined in RSA 77-A:1, XX" for "(1954) as amended" following "Revenue Code".

—1983. Chapter 318 added "Additions and" in the section catchline, substituted "adjustments shall be made to" for "deductions are allowed from" preceding "gross" in the introductory paragraph, redesignated former pars. II-VII as present pars. I-VI and added pars. VII-XI.

Chapter 444 added par. XII.

—1981. Paragraph I: Repealed.

Paragraph II: Deleted "and which does not qualify for deduction under the provisions of paragraph I of this section" following "RSA 77" at the end of the paragraph.

Paragraph IV: Substituted "proprietorship or partnership" preceding "a deduction" in the first sentence, "set forth in this paragraph" for "herein set forth" following "standards" in the fifth sentence and deleted "of this section" following "IV" in the sixth sentence.

—1977. Paragraph IV: Deleted "or partnership" preceding "a deduction" in the first sentence and rewrote the fifth sentence.

—1975. Paragraph I: Chapter 503 rewrote the first sentence.

Paragraph VII: Added by ch. 439:37.

—1973. Paragraph IV: Chapter 403 substituted "shall" for "may" preceding "take into account", inserted "the proprietor or any of the partners" following "employees" and substituted

"their" for "its" preceding "property" in the fourth sentence.

Chapter 544 substituted "commissioner" for "commission" wherever it appeared.

—1972. Paragraph VI: Added.

—1971. Paragraph I: Rewritten by ch. 515 to the extent that a detailed comparison would be impracticable.

Paragraph IV: Chapter 515 added the last sentence.

Paragraph V: Added by ch. 360.

Effective date of amendments

—2003 amendment. 2003, 203:3, provided: "This act [which amended par. XIII of this section, and rescinded Rules of the Department of Revenue Administration, Rev. 303.03], shall take effect July 1, 2005 for taxable periods ending on or after July 1, 2005."

Purpose of 1989 amendment.

1989, 168:1, provided: "The intent of the legislature, through this act, is to enforce the original provisions of the New Hampshire business profits tax, which is designed to apply a reasonable tax on the profits of all business organizations conducting business in New Hampshire."

Severability

—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

—1991, 354 amendment. 1991, 354:8, was subject to a severability clause. See 1991, 354:20, as amended by 1993, 49:8.

Applicability of 1991, 354 amendment.

1991, 354:21, III, eff. July 2, 1991, provided section 8 of this act, which amended paragraph III of this section, shall apply to return and taxes due on account of taxable periods ending on or after January 1, 1991.

Applicability of 1989.

1989, 168:3, provided that 1989, 168:2, would apply to returns and taxes due on account of taxable periods beginning on or after January 1, 1989.

Applicability of 1988.

1988, 199:3, provided that 1988, 199:1, 2, would apply to returns and taxes due on account of taxable periods beginning after December 31, 1988.

Applicability of 1983.

1983, 318:19, and 1983, 444:4, provided that 1983, 318:3, and 1983, 444:2, would apply to returns and taxes due on account of taxable periods ending after June 30, 1983.

Applicability of 1998 amendment.

1998, 163:9, eff. July 1, 1998, provided that this act, which amended this section and RSA 77:4, 77-A:1, 77-E:1, enacted RSA 77:4-f and 77-A:5-b, and repealed RSA 77-A:2-c, shall apply for all taxable periods ending after June 30, 1998.

Three-year business transition credit.

1993, 350:39, as amended by 1994, 232:1, eff. July 1, 1993, provided:

"I. There shall be allowed as a credit against the tax due under RSA 77-E for the first tax period ending on or after July 1, 1993, and each of the 2 succeeding tax periods an amount equal to the business enterprise's business transition loss amount. Any business transition loss amount which is not fully utilized as a credit under this section with respect to one tax period may be carried forward for use against tax due under RSA 77-E for later tax periods. The total amount of allowable business transition credit shall not exceed the total amount of taxes due and paid by the business enterprise under RSA 77-A for taxable periods ending on or after January 1, 1987, and ending on or before June 30, 1990.

"II. For purposes of this transition section, business transition loss amount means the product of (a) the aggregate net operating loss carryover of a business enterprise determined pursuant to section 172 of the United States Internal Revenue Code attributable to taxable periods ending on or after June 1, 1991, and ending on or before June 30, 1992, and (b) with respect to each applicable taxable period, the rate of tax

specified in RSA 77-A:2. In the case of a business enterprise which is not treated as a corporation under subchapter C of the United States Internal Revenue Code, business transition loss amount shall be based on the amount that would be determined under section 172 of the United States Internal Revenue Code if the business enterprise were a C corporation. For purposes of this definition, a business enterprise's aggregate net operating loss carryover shall not exceed that amount which is allocated to this state by application of the apportionment method described in RSA 77-A:3. In addition, a business enterprise's aggregate net operating loss carryover shall not exceed that amount which was generated directly from operations of such business enterprise and not from operations of another enterprise which may be an affiliate. For purposes of this definition, the aggregate net operating loss carryover shall not be subject to the \$ 250,000 annual limitation established in RSA 77-A:4, XIII.

"III. Notwithstanding any other provision of RSA 77-A to the contrary, if a business organization applies the business transition credit to reduce tax due under RSA 77-E, the amount of net operating loss that may be carried forward under this section shall be reduced by an amount equal to (a) the amount of credit applied to reduce tax due under RSA 77-E, divided by (b) the rate of tax specified in RSA 77-A:2 and applied for purposes of determining the business transition loss amount for each applicable tax period under this transition section.

"IV. The amount allowed as credit pursuant to RSA 77-A:5, X, for taxes paid under RSA 77-E shall be reduced by the amount of business transition credit utilized as a credit against the tax due under RSA 77-E.

"V. For purposes of this section any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to the ending of any taxable period specified in this section shall be deemed to have ended on the last day of such taxable period."

1993, 350:43, I, eff. July 1, 1993, provided that 1993, 350:39, which is set out in this note above, shall apply to returns and taxes and reports and fees due on account of taxable periods ending on or after July 1, 1993; in the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993 for the purposes of 1993, 350.

Transition period for repeal of par. XVIII.

2004, 143:9, eff. May 24, 2004, provided: "The provisions of RSA 77-A, VI, RSA 77-A:4-f, II, RSA 77-A:1, XXI (a)(4), RSA 77-A:1, XXIV and XXV, RSA 77-A:4, XVIII, RSA 77-A:5-b, and RSA 77-E:1, XIV(a)(4) shall remain in effect as enacted prior to the effective date of this act [May 24, 2004], for companies that qualified for qualified investment capital company status and submitted a valid election therefor prior to the effective date of this act."

NOTES TO DECISIONS

1. Constitutionality
2. Limitation on deduction
3. Standing to challenge constitutionality
4. Subsidiaries

1. Constitutionality

RSA 77-A:4, IV does not facially violate the Commerce Clause; thus, a parent corporation that was not entitled to the statutory deduction because its foreign subsidiaries did not transact business in New Hampshire was not entitled to relief. A unitary business with a foreign subsidiary operating in New Hampshire and a unitary business with a foreign subsidiary not operating there are each taxed once; there is no differential treatment that benefits the former and burdens the latter, the latter is not taxed more heavily than the former, and the former is not given a direct commercial advantage over the latter. *GE v. Comm'r*, 154 N.H. 457, 914 A.2d 246, 2006 N.H. LEXIS 187 (2006).

2. Limitation on deduction

When RSA 77-A:4, IV does allow for a dividend-received deduction, the deduction is limited by the amount of income already taxed in New Hampshire. *GE v. Comm'r*, 154 N.H. 457, 914 A.2d 246, 2006 N.H. LEXIS 187 (2006).

3. Standing to challenge constitutionality

Any corporate parent that pays business profits tax in New Hampshire but is ineligible for the dividend-received deduction in RSA 77-A:4, IV is a proper party to bring suit for a determination of whether the basis upon which it is ineligible is constitutionally permissible. Such an adjudication directly and specifically affects its rights as a parent corporation paying business profits tax in the state. *GE v. Comm'r*, 154 N.H. 457, 914 A.2d 246, 2006 N.H. LEXIS 187 (2006).

4. Subsidiaries

Where this section required that the earnings of a subsidiary corporation from which the dividends paid to the parent corporation derive must have already been subject to a business profits tax under this chapter in order for dividends to be allowed as a deduction to the parent corporation, and it was agreed that the dividends at issue consisted of earnings upon which no business profits tax was assessed, the deduction was properly disallowed. *First Financial Group Inc., v. State*, 121 N.H. 381, 430 A.2d 162, 1981 N.H. LEXIS 327 (1981).

Cited:

Cited in *Opinion of the Justices*, 123 N.H. 296, 460 A.2d 93, 1983 N.H. LEXIS 267 (1983); *Jacobs v. Price*, 125 N.H. 196, 485 A.2d 282, 1984 N.H. LEXIS 405 (1984); *Opinion of Justices*, 131 N.H. 640, 557 A.2d 273, 1989 N.H. LEXIS 38 (1989); *Opinion of Justices*, 132 N.H. 777, 584 A.2d 1342, 1990 N.H. LEXIS 139 (1990).

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "The Deductibility of Compensation Payments to Owner-Employees: A High Priority Audit Issue for New Hampshire Business Organizations," see 33 N.H.B.J. 284 (1992).

77-A:4-a. Special Rule for "Safe Harbor" and Other Similar Leases.

For the purpose of preserving income lost through federal changes to the United States Internal Revenue Code (1954), as amended, on leasing transactions, the commissioner shall adopt rules, pursuant to RSA 541-A, relative to deductions and additions to gross business profits for business organizations involved in leasing transactions known as "safe harbor" leases under section 168(f)(8) of the United States Internal Revenue Code (1954), as amended, or other similar leasing transactions.

Source.

1983, 318:4, eff. June 30, 1983.

References in text.

The Internal Revenue Code (1954), referred to in this section, was redesignated as the Internal Revenue Code of 1986 by Pub. L. 99-514, § 2(a). Section 168 of the Code is classified to 26 USCS § 168.

Applicability of enactment.

1983, 318:19, provided that this section would apply to returns and taxes due on account of taxable periods ending after June 30, 1983.

77-A:5. Credits.

The following credits are allowed against the tax due under this chapter:

I. Taxes paid pursuant to RSA 83-C, covering the period from July 1, 1983 through December 31, 1997, and taxes paid pursuant to RSA 83-B covering the period from January 1, 1983, through June 30, 1983;

II. [Repealed.]

III. Taxes paid pursuant to sections of RSA 400-A relating to taxation of insurance companies;

IV-VI. [Repealed.]

VII. There shall be allowed a job creation tax credit equal to 15 percent of the compensation, as defined in RSA 77-A:1, XXII, paid during the taxable period to eligible employees, as defined in RSA 77-A:1, XXIII, provided, however, that in no event shall the total number of eligible employees for which the tax credit is taken exceed the increase in the total number of employees from the previous tax period to the current tax period. In the event that the excess of (a) the total number of employees in New Hampshire on the last day of the current taxable period over (b) the total number of employees in New Hampshire on the last day of the previous tax period is less than the total number of eligible employees for the current taxable period, then the total amount of compensation for which a credit may be taken shall equal such excess multiplied by the average compensation of such eligible employees. Furthermore, the total credit allowed under this paragraph shall not exceed 5 percent of the tax due under this chapter before any credits under RSA 77-A:5 are taken into account. The job creation tax credit allowed under this paragraph shall take effect July 1, 1992, and shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1992, for a period of 5 years only. The job creation tax credit allowed under this paragraph shall not be allowed for taxable periods ending on or after July 1, 1997.

VIII-IX. [Repealed.]

X. Taxes paid pursuant to RSA 77-E. Such credit shall be applied in accordance with RSA 77-E:13. No amount of tax paid pursuant to RSA 77-E and used as a credit against the taxes due under RSA 83-C or RSA 400-A shall be allowed as a credit under this paragraph except as provided in RSA 83-C:2-a or RSA 400-A:34-a. Any unused portion of the credit allowed under this paragraph may be carried forward and allowed against the tax due under this chapter for 5 taxable periods from the taxable period in which the tax was paid.

XI. The investment tax credit as computed in RSA 162-L:10.

[Effective until July 1, 2011; see prospective repeal note below.]

XII. The economic revitalization zone tax credit, as computed in RSA 162-N:6.

[Effective until July 1, 2013; see prospective repeal note below.]

XIII. (a) There shall be allowed a research and development tax credit for qualified manufacturing research and development expenditures made or incurred during the fiscal year, as follows:

(1) The aggregate of tax credits issued by the commissioner to all taxpayers claiming the credit shall not exceed \$1,000,000 for any fiscal year, except that any amount of the credit less than \$1,000,000 that is not claimed in the fiscal year ending June 30, 2008 may be claimed in the fiscal year ending June 30, 2009.

(2) Each credit shall be used to offset the taxpayer's tax liability within the subsequent 5 tax years. The amount of the credit shall be the lesser of:

(A) Ten percent of the excess of the qualified manufacturing research and development expenses for the taxable year over the base amount;

(B) The proportional share of the maximum aggregate credit amount allowed in subparagraph (1);

(C) \$50,000.

(3) Taxpayers shall apply for the tax credit on forms provided by the commissioner and shall be accompanied by information or records required by the commissioner. Such application shall be postmarked no later than June 30 following the tax year during which research and development occurred.

(4) A determination on the final amount of the credit awarded by the commissioner to each taxpayer claiming the credit shall be made no later than September 30 of each year.

(5) Wages for which a credit is taken under this paragraph shall not also be eligible for a credit under RSA 162-N.

(b) For purposes of this paragraph:

(1) The term "qualified manufacturing research and development expenditures" shall mean solely any wages paid or incurred to an employee of the business organization for services rendered by such employee within this state within the meaning of RSA 77-A:3; I(b), provided that:

(A) Such wages shall be treated as wages for qualified research expenses under section 41(b) of the United States Internal Revenue Code.

(B) Such services are undertaken for the purpose of discovering information which constitutes qualified research and development of a new or improved manufacturing process or business component of the business organization.

(C) The wages qualify and are reported as a credit by the business orga-

nization under section 41 of the United States Revenue Code as defined in RSA 77-A:1, XX.

(D) The wages are reported by the business organization in the enterprise value tax base under RSA 77-E.

(2) "Base amount" shall mean the base amount of expenditure as defined under section 41 of the United States Revenue Code as defined by RSA 77-A:1, XX, except that the minimum base amount may be 0.

(c) A unitary business or an enterprise consisting of one or more taxpayers under this chapter shall be considered a single taxpayer for purposes of claiming the credit under this paragraph.

Source.

1970, 5:1. 1971, 515:16. 1975, 439:35. 1983, 326:4; 469:99. 1991, 334:4; 354:2, 9, 10. 1993, 49:13, I, eff. April 16, 1993; 350:15, 16, 41, I, eff. July 1, 1993; 350:41, II, eff. July 1, 1994; 350:41, III, eff. July 1, 1996. 1995, 188:5, II, eff. July 1, 1995; 308:93, II, eff. June 30, 1995. 1997, 347:3. 1998, 338:1, eff. July 1, 1999. 2003, 301:3, eff. July 1, 2003. 2007, 263:121, eff. July 1, 2007; 271:1, eff. July 1, 2007.

References in text.

1993, 49:14, I, eff. April 16, 1993, provided that the repeal of par. VI of this section by section 13 of the act, shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1991.

Amendments

—2007. Paragraph XII: Rewritten by Chapter 263 to the extent that a detailed comparison would be impracticable.
Paragraph XIII: Added by Chapter 271.

—2003. Paragraph XII: Added.

—1998. Paragraph XI: Added.

—1997. Paragraph I: Inserted "covering the period from July 1, 1983 through December 31, 1997" following "RSA 83-C".

—1995. Paragraph IX: Repealed by chs. 188 and 308.

—1993. Paragraph II: Repealed by 350:41, I.

Paragraph V: Repealed by ch. 350:41, II.

Paragraph VI: Repealed by ch. 49:13, I.

Paragraph VIII: Rewritten by ch. 350:15.

Repealed by ch. 350:41, III.

Paragraphs IX, X: Added by 350:16.

—1991. Chapter 334 substituted "162-L:8" for "162-L:10" in par. V.

Chapter 354 added pars. VI-VIII and substituted "credits allowable under this section" for "such credit allowed" preceding "shall not" in the undesignated concluding paragraph.

—1983. Paragraph I: Rewritten by ch. 469 to the extent that a detailed comparison would be impracticable.

Paragraph V: Added by ch. 326.

—1975. Paragraph III: Substituted "RSA 400-A" for "RSA 402".

—1971. Paragraph IV: Repealed.

Prospective repeal of par. XII. 2007, 263:123, II, provides for the repeal of par. XII, effective July 1, 2011.

Prospective repeal of par. XIII. 2007, 271:6, I, provides for the repeal of par. XIII, effective July 1, 2013.

Severability

—2007, 271 amendments. 2007, 271 was subject to a severability clause. See 2007, 271:4.

—1993, 350 amendments. 1993, 350 was subject to a severability clause. See 1993, 350:40.

—1991, 354:9, 10 amendments. 1991, 354:9, 10, were subject to a severability clause. See 1991, 354:20.

Applicability of 2007, 271 amendments.

2007, 271:5, eff. July 1, 2007, provided that sections 1-3 [which amended this section and enacted 77-E:3-b and Ch. 162-P] shall apply to taxes due on account of taxable periods ending on or after September 7, 2007.

Applicability of 1995, 188 amendments.

1995, 188:6, II as amended by 1995, 308:94, provided that 1995, 188:5, which was repealed and reenacted by 1995, 308:93 to provide for the repeal of par. IX, shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1995; in the case of any business organization which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code, which is classified to 26 USCS § 441, and the fiscal year of which ends on the last day of the week nearest to June 30, 1995, the taxable period shall be deemed to have ended on June 30, 1995, for the purposes of this act.

Applicability of 1993, 350 amendments.

1993, 350:43, IV, eff. July 1, 1993, provided that the repeal of par. II of this section by 1993, 350:41, I, shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1993; in the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the Internal Revenue Code, which is classified to 26 USCS 441, and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993, for the purposes of 1993, 350.

1993, 350:43, III, eff. July 1, 1993, provided that the repeal of par. V of this section by 1993, 350:41, II, shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1994, except that any unused portion of such credit from contributions made pursuant to RSA 162-L:8 on or before June 30, 1994, shall be allowed as a credit or carried forward in the manner and subject to the limitations of RSA 162-L:8, II, as such paragraph was effective on June 30, 1994; in the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the Internal Revenue Code, which is classified to 26 USCS 441, and the fiscal year of which ends on the last day of the week nearest to June 30, 1994, the taxable period shall be deemed to have ended on June 30, 1994, for the purposes of 1993, 350.

1993, 350:43, I, eff. July 1, 1993, provided that the amendment to par. VIII of this section by section 15 of the act shall apply to returns and taxes and reports and fees due on account of taxable periods ending on or after July 1, 1993; in the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the Internal Revenue Code, which is classified to 26 USCS 441, and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993, for the purposes of 1993, 350.

1993, 350:43, V, eff. July 1, 1993, provided that the repeal of par. VIII of this section by 1993, 350:41, III, shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1996; in the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the Internal Revenue Code, which is classified to 26 USCS 441, and the fiscal year of which ends on the last day of the week nearest to June 30, 1996, the taxable period shall be deemed to have ended on June 30, 1996, for the purposes of 1993, 350.

Repeal of 1995, 188:5, III-V amendment.

1995, 188:5, III-V, eff. July 1, 1995, provided for the repeal of pars. VII-IX of this section; however, 1995, 308:93, eff. June 30, 1995, amended 1995, 188:5 to delete the provisions repealing pars. VII and VIII. Therefore, par. VIII of this section was repealed by 1993, 350:41, III, eff. July 1, 1996.

Applicability and effective dates of 1991, 354:10 amendments.

1991, 354:21, V, eff. July 2, 1991, provided that par. VII, as

added by section 10 of the act, shall take effect July 1, 1992, and apply to returns and taxes due on account of taxable periods ending on or after July 1, 1992.

1991, 354:21, VII, eff. July 2, 1991, provided that par. VIII, as added by section 10 of the act, shall take effect July 1, 1991, and apply to returns and taxes due on account of taxable periods ending on or after July 1, 1991, but only with respect to capital expenditures incurred on or after July 1, 1991.

Business profits tax credit for nuclear station property tax —Constitutionality questioned; findings and applicability.

See notes set out preceding RSA 83-D:1.

Contingent 1997 amendment.

1997, 347:6, provided:

"I. If the statewide electric utility industry restructuring plan issued by order of the public utilities commission relative to competitive electric utility service requirements has not been implemented on or before January 1, 1998, this act shall take effect 30 days after the public utilities commission shall certify to the commissioner of revenue administration that it has begun implementing such order or any subsequent order relative thereto, except as provided in paragraphs II and III. A final return and payment of any taxes due under RSA 83-C shall be filed on or before the fifteenth day of the third month following the repeal of RSA 83-C by any person subject to such chapter. Such return and payment shall be made in accordance with the requirements of RSA 83-C as if that chapter remained in effect. The credit for taxes paid pursuant to RSA 83-C under RSA 77-A:5, I shall be extended to such taxes paid for any tax period ending after December 31, 1997, resulting from the application of this paragraph.

"II. If the statewide electric utility industry restructuring plan issued by order of the public utilities commission relative to competitive electric utility service requirements has not been implemented on or before January 1, 1998, this act [which amended this section, and RSA 21-J:31, 21-J:33-a, enacted RSA 83-E, and repealed RSA 83-C], shall take effect 30 days after the public utilities commission shall certify to the commissioner of revenue administration that it has begun implementing such order or any subsequent order relative thereto, except as provided in paragraphs II and III. A final return and payment of any taxes due under RSA 83-C shall be filed on or before the fifteenth day of the third month following the repeal of RSA 83-C by any person subject to such chapter. Such return and payment shall be made in accordance with the requirements of RSA 83-C as if that chapter remained in effect. The credit for taxes paid pursuant to RSA 83-C under RSA 77-A:5, I shall be extended to such taxes paid for any tax period ending after December 31, 1997, resulting from the application of this paragraph.

"III. If this act becomes effective pursuant to paragraph I or II of this section, the effective date as applied to customers of the Town of Ashland Electric Department shall be June 30, 2002; Littleton Water and Light Department shall be January 1, 2004; New Hampton Village Precinct Electric Department shall be June 30, 2002; Wolfeboro Municipal Electric Department shall be June 30, 2002; and Woodsville Water and Light Department shall be October 31, 2007."

1997 amendment contingency satisfied.

Following a letter dated March 30, 2001 from the Public Utilities Commission to the Commissioner of the Department of Revenue Administration sent pursuant to 1997, 347:6, indicating that the public utilities commission has begun implementing its order relative to the statewide electric utility industry restructuring plan, 1997, Chapter 347, took effect April 29, 2001.

NOTES TO DECISIONS

Railroads and public utilities

Proposed amendment which would repeal paragraph IV of this section, which provides a credit against the business profits tax for taxes paid by railroads and public utilities under RSA 82, would be constitutional. Opinion of the Justices, 111 N.H. 210, 279 A.2d 741, 1971 N.H. LEXIS 159 (1971).

Cited:

Cited in *First Financial Group Inc., v. State*, 121 N.H. 381, 430 A.2d 162, 1981 N.H. LEXIS 327 (1981); Opinion of the Justices, 123 N.H. 296, 460 A.2d 93, 1983 N.H. LEXIS 267 (1983); Opinion of Justices, 132 N.H. 777, 584 A.2d 1342, 1990 N.H. LEXIS 139 (1990).

77-A:5-a. Tax Expenditure Report.

On or before February 1 of every calendar year the commissioner shall certify to the general court and the governor an analysis of each of the past year's credits allowed under RSA 77-A, RSA 77-E, RSA 83-C, RSA 83-D, and RSA 400-A against the business profits tax imposed by this chapter and the apportionment factors under RSA 77-A:3, II(a).

Source.

1991, 354:14. 1993, 350:17, eff. July 1, 1993.

Amendments

—1993. Inserted "RSA 77-E" following "RSA 77-A", deleted "RSA 84" following "RSA 83-D" and added "and the apportionment factors under RSA 77-A:3, II(a)" following "chapter".

Severability

—1993, 350 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

Severability of enactment.

1991, 354:14, was subject to a severability clause. See 1991, 354:20, as amended by 1993, 49:8.

77-A:5-b. Election and Reporting for Qualified Investment Companies.

I. Business organizations shall file an election with the commissioner to be a qualified investment company with respect to any taxable period on a form prescribed by the commissioner at any time on or before the fifteenth day of the third month of such taxable period. Such an election shall be effective for the taxable period of the qualified investment company for which it is made and for all succeeding taxable periods until such election is terminated as provided in this section.

II. Every business organization electing treatment as a qualified investment company shall, with respect to each taxable period, file a report, in accordance with such rules or forms as the commissioner may prescribe, setting forth the following:

(a) The aggregate amounts of funds invested in the qualified investment company.

(b) The names, addresses, and federal taxpayer identification numbers of the holders of such qualified investment company and the amount, if any, of their proportional share of the income required to be included in such holder's New Hampshire tax return under RSA 77:4, V and RSA 77-A:4, XV.

(c) The name, address, and federal taxpayer identification number of the manager of such qualified investment company.

(d) The amount of the income received and expenses incurred by the qualified investment company for the tax period.

(e) Notwithstanding any other provision of this section, a qualified investment company shall be deemed to have satisfied the reporting requirements of this section if it files with the commissioner a copy of its federal income tax return, as filed with the Internal Revenue Service.

III. Such report or copy of the federal income tax return shall be filed at any time on or before 30 days following the filing of the federal income tax return with the Internal Revenue Service. Any qualified investment company which fails to timely file the report as required by this section shall pay a penalty equal to \$100 for each day such report is not filed, unless an extension has been granted by the commissioner. In no event shall the monetary fine imposed by this paragraph exceed \$5,000. A qualified investment company notified by the department that such report is overdue by more than 50 days shall have 30 days from the date of such notification to file the delinquent report. If the delinquent report is not filed within 30 days after notification, the commissioner shall disallow the business organization qualified investment company status for the tax periods for which a timely report is not filed.

IV. The qualified investment company shall be subject to the provisions of RSA 77-A:11 and RSA 77-E:10. The commissioner is authorized to audit and enforce such provisions with any of the powers granted under this chapter and RSA 77-E.

V. The election provided for in paragraph I may be terminated as follows:

(a) By revoking said election by consent of the majority of the members, partners, or shareholders of the qualified investment company, or by determination of the manager of the qualified investment company. Such revocation must be filed with the department on or before the fifteenth day of the third month of the taxable period to be effective for such period. Any revocation filed after the fifteenth day of the third month of the taxable period shall be effective for the following tax period; or

(b) Whenever the company ceases to satisfy the requirements for qualification as a qualified investment company as provided in RSA 77-A:1, XXI.

Source.

1998, 163:6, eff. July 1, 1998. 2004, 143:5, eff. May 24, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

Applicability of 1998 amendment.

1998, 163:9, eff. July 1, 1998, provided that this act, which enacted this section and RSA 77:4-f, amended RSA 77:4, 77-A:1, 77-A:4, 77-E:1, and repealed RSA 77-A:2-c, shall apply for all taxable periods ending after June 30, 1998.

Transition period for amendment of section.

2004, 143:9, eff. May 24, 2004, provided: "The provisions of RSA 77:4, VI, RSA 77:4-f, II, RSA 77-A:1, XXI(a)(4), RSA 77-A:1, XXIV and XXV, RSA 77-A:4, XVIII, RSA 77-A:5-b, and

RSA 77-E:1, XIV(a)(4) shall remain in effect as enacted prior to the effective date of this act [May 24, 2004], for companies that qualified for qualified investment capital company status and submitted a valid election therefor prior to the effective date of this act."

77-A:6. Returns, Declarations, and Combined Reporting.

I. Every business organization having gross business income in excess of \$50,000 as defined by RSA 77-A:1, VI, during the taxable period, shall on or before the fifteenth day of the third month in the case of organizations required to file a United States corporation tax return, and the fifteenth day of the fourth month in the case of all other business organizations, following expiration of its taxable period, make a return to the commissioner. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to the form of such return and the data which it must contain for the correct computation of taxable business profits and gross business income attributable to this state and the tax assessed on it. All returns shall be signed by the taxpayer or by its authorized representative, subject to the pains and penalties of perjury.

II. Every business organization shall in addition file a declaration of its estimated business profits tax for its subsequent taxable period; provided, however, if the estimated tax is less than \$200, a declaration need not be filed; and provided further that a declaration shall be filed at the end of any quarter thereafter in which estimated tax exceeds \$200. The declaration shall be filed when payments are due under RSA 77-A:7.

III. [Repealed]

IV. A business organization which is part of a water's edge combined group and required to report under this chapter shall file a return containing the combined net income of the water's edge combined group and such other informational returns as the commissioner shall require by rules adopted under RSA 541-A. The commissioner is authorized to impose the tax as though the entire combined net income of the water's edge combined group was that of one business organization or the commissioner may adjust the tax or income in such other manner as the commissioner shall determine to be equitable if the commissioner determines it to be necessary in order to clearly reflect the net income earned by such organization from business done in this state. This provision shall not authorize the application of worldwide combined reporting except as provided in RSA 77-A:2-b, II.

Source.

1970, 5:1. 1971, 515:6. 1973, 544:9; 579:1, 4, 5. 1975, 166:1; 439:34, 36. 1977, 593:3, 4; 605:1. 1981, 128:17; 445:8, 568:65. I. 1986, 153:6. 1991, 163:43, IX. 1993, 202:1, eff. July 1, 1993. 1996, 154:3, eff. July 1, 1996.

Amendments

—1996. Paragraph IV: Substituted “the commissioner” for “he” in three places in the second sentence.

—1993. Paragraph I: Substituted “\$50,000” for “\$12,000” in the first sentence.

—1991. Paragraph III: Repealed.

—1986. Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

—1981. Paragraph I: Chapter 128 deleted “under such regulations and in such form or manner as the commissioner may prescribe” following “return to the commissioner” in the first sentence and rewrote the second sentence.

Chapter 445 inserted “and gross business income attributable to this state” following “business profits” in the second sentence.

Chapter 568 substituted “\$12,000” for “\$6,000” in the first sentence.

Paragraph II: Chapter 445 deleted “at the same time the return is filed as required by paragraph I” preceding “every business”, “estimated taxable business profits and” following “declaration of” and inserted “and” preceding “provided further” in the first sentence, rewrote the second sentence and made minor changes in punctuation throughout the paragraph.

Paragraph III: Added by ch. 445.

Paragraph IV: Rewritten by ch. 445 to the extent that a detailed comparison would be impracticable.

—1977. Paragraph I: Chapter 605 inserted “in the case of organizations required to file a U.S. corporation tax return and the fifteenth day of the fourth month in the case of all other business organizations” preceding “following expiration” in the first sentence.

Chapter 593:3 substituted “fifteenth day of the third month” for “the first day of the fifth month” in the first sentence.

Paragraph IV: Chapter 593:4 substituted “thirtieth” for “fifteenth” preceding “day”.

—1975. Paragraph II: Chapter 166 added the two provisos at the end of the first sentence.

Chapter 439:36 deleted “unless for good cause the commissioner permits the taxpayer to make a lesser estimate” following “therewith” in the second sentence.

Paragraph III: Repealed by ch. 439:34.

—1973. Chapter 544 substituted “commissioner” for “commission” wherever it appeared in pars. I-III.

Chapter 579 deleted “commencing July 1, 1970” preceding “every business organization” and added “having gross business income in excess of six thousand dollars as defined by RSA 77-A:1, VI, during the taxable period” thereafter in the first sentence of par. I, added the second sentence of par. II and added par. IV.

—1971. Paragraph II: Deleted “except those anticipating a gross business profit of less than ten thousand dollars during its subsequent taxable period” following “organization” in the first sentence.

Paragraph III: Added.

Purpose of 1986 amendment.

1986, 153:1, provided: “This act amends existing law by limiting the application of the business profits tax to the water’s edge by eliminating overseas business organizations from subjection to this tax. However, it is not the intent of this legislation to alter those basic premises of New Hampshire taxation policies which follow the federal method of calculating taxable income, particularly when such policies or procedures are intended to further New Hampshire concerns with equal and proportional treatment of taxpayers.”

Applicability of 1993 amendment.

1993, 202:2, eff. July 1, 1993, provided that section 1 of the act, which amended par. I of this section, shall apply to returns and taxes due on account of taxable periods ending after June 30, 1993.

Applicability of 1986.

1986, 153:9, provided that 1986, 153:6, would apply to returns and taxes due on account of taxable periods beginning after June 30, 1986.

Cross References.

Penalty for failure to make or making false return, see RSA 21-J:31, 39.

NOTES TO DECISIONS

Constitutionality

Although this section, as it read in the tax years in question, empowered the commissioner to require “a corporation” to report its business profits under the unitary method where certain criteria were met and did not mention other forms of business organization, the provision was not thus rendered constitutionally flawed since the apportionment formula contained in RSA 77-A:3 authorized the application of the unitary method to any business organization when the method provided equitable taxation of the business organization’s business profits within the state. *Baxter Int’l v. State*, 140 N.H. 214, 665 A.2d 350, 1995 N.H. LEXIS 131 (1995).

Although the plaintiffs asserted that other forms of business organizations were prohibited from filing under the unitary method and that this section therefore violated equal protection, RSA 77-A:3 specifically authorized the use of “any other method to effect an equitable apportionment of the business organization’s gross business profits” and the fact that the commissioner’s approval was required did not foreclose the option of employing the unitary method. *Baxter Int’l v. State*, 140 N.H. 214, 665 A.2d 350, 1995 N.H. LEXIS 131 (1995).

This section did not violate part I, article 37 of the New Hampshire Constitution by giving the commissioner “unfettered discretion” to implement the unitary method as the delegation of authority contained in the statute contained a declared policy and a prescribed standard laid down by the legislature. *Baxter Int’l v. State*, 140 N.H. 214, 665 A.2d 350, 1995 N.H. LEXIS 131 (1995).

This section did not impermissibly vest the commissioner with the power to select certain corporations for combined reporting since requiring certain corporations to provide information regarding their possible membership in a unitary business was rationally related to the state’s interest in levying a tax on business organizations in a fair and nondiscriminatory fashion. *Baxter Int’l v. State*, 140 N.H. 214, 665 A.2d 350, 1995 N.H. LEXIS 131 (1995).

Cited:

Cited in *Johnson & Porter Realty Co. v. Commissioner of Revenue Administration*, 122 N.H. 696, 448 A.2d 435, 1982 N.H. LEXIS 431 (1982).

77-A:7. Payments Due With Returns and With Estimates.

I. (a) All business organizations required under RSA 77-A:6, II to make payments of estimated tax shall make such payments in installments as follows: 25 percent is due and payable on the fifteenth day of the fourth month of the subsequent taxable year; 25 percent is due and payable on the fifteenth day of the sixth month of the subsequent taxable year; 25 percent is due and payable on the fifteenth day of the ninth month of the subsequent taxable year; and 25 percent is due and payable on the fifteenth day of the twelfth month of the subsequent taxable year.

(b) If the return required by RSA 77-A:6, I shows an additional amount to be due, such additional amount is due and payable on the prescribed payment date. If such return shows

an overpayment of the tax due, the commissioner shall refund or credit the overpayment to the taxpayer in accordance with RSA 21-J:28-a.

II. [Repealed.]

Source.

1970, 5:1; 56:6. 1971, 515:8. 1973, 544:9. 1975, 439:34, VII. 1979, 446:4. 1988, 23:4. 1990, 3:71. 1991, 163:17. 1993, 350:18, eff. July 1, 1993.

Amendments

—1993. Paragraph I(a): Substituted “25” for “30” preceding “percent” wherever it appeared.

—1991. Paragraph I: Designated the existing first and second paragraphs as subpars. (a) and (b) respectively, and substituted “on the prescribed payment date” for “at the time the return is filed” following “payable” and made a minor change in punctuation in the first sentence and “or credit the overpayment to the taxpayer in accordance with RSA 21-J:28-a” for “such overpayment to the taxpayer or shall allow the taxpayer a credit against a subsequent payment or payment due, to the extent of the overpayment, at the taxpayer’s option” following “refund” in the second sentence of subpar. (b).

—1990. Paragraph I: Substituted “30 percent” for “one quarter” in two places and “20 percent” for “one quarter” in two places in the first paragraph.

—1988. Rewrote the section catchline.

—1979. Paragraph I: Rewritten to the extent that a detailed comparison would be impracticable.

—1975. Paragraph II: Repealed.

—1973. Paragraph I: Substituted “commissioner” for “commission” preceding “shall refund” in the third sentence.

—1971. Designated the existing provisions of the section as par. I, deleted the fourth and fifth sentences of that paragraph and added par. II.

—1970. Added the fourth sentence.

Severability

—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

Applicability of 1993 amendment.

1993, 350:43, I, eff. July 1, 1993, provided that the amendment to par. I(a) of this section by section 18 of the act shall apply to returns and taxes and reports and fees due on account of taxable periods ending on or after July 1, 1993; in the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the Internal Revenue Code, which is classified to 26 USCS 441, and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993, for the purposes of 1993, 350.

Increase in amount of installment payments — Generally.

1991, 5:1, I, eff. March 28, 1991, provided: “Notwithstanding RSA 77-A:7, all business organizations required under RSA 77-A:6, II to make payments of estimated tax shall make such payments in installments as follows: 35 percent is due and payable on the fifteenth day of the fourth month of the subsequent taxable year; 35 percent is due and payable on the fifteenth day of the sixth month of the subsequent taxable year; 15 percent is due and payable on the fifteenth day of the ninth month of the subsequent taxable year; and 15 percent is due and payable on the fifteenth day of the twelfth month of the subsequent taxable year.”

—Applicability; termination.

1991, 5:2, eff. March 28, 1991, provided that 1991, 5:1, I, which is set out as a note above, shall take effect on March 28, 1991, regardless of when the taxable period of the business organization begins or ends and shall continue for one year from March 28, 1991.

Cross References.

Penalty for underpayment of estimated tax, see RSA 21-J:32.

77-A:7-a. Interest.

[Repealed 1991, 163:43, X, eff. May 27, 1991.]

Former section(s).

Former RSA 77-A:7-a, relating to payment of interest, was derived from 1975, 439:29; 1981, 445:9, 465:3; 1982, 42:97; 1983, 441:3; 1985, 204:10; and 1988, 23:5. See now RSA 21-J:28.

77-A:8. Additional Returns.

When the commissioner has reason to believe that a taxpayer has failed to file a return or to include any part of its gross business profits in a filed return, the commissioner may require the taxpayer to file a return or a supplementary return showing such additional information as the commissioner prescribes. Upon the receipt of the supplementary return, or if none is received within the time set by the commissioner, the commissioner may find and assess the amount due upon the information that is available. The making of such additional return does not relieve the taxpayer of any penalty for failure to make a correct original return or relieve it from liability for interest imposed under RSA 21-J:28 or any other additional charges imposed by the commissioner. This section shall not be construed to modify or extend the statute of limitations provided in RSA 21-J:29.

Source.

1970, 5:1. 1971, 515:9. 1973, 544:9. 1975, 439:30. 1991, 163:18, eff. May 27, 1991.

Amendments

—1991. Substituted “RSA 21-J:28” for “RSA 77-A:7-a” in the third sentence and added the fourth sentence.

—1975. Substituted “RSA 77-A:7-a” for “RSA 77-A:7, II”.

—1973. Substituted “commissioner” for “commission” wherever it appeared.

—1971. Inserted “the” preceding “receipt” in the second sentence and substituted “for any late payment charge and interest imposed in accordance with RSA 77-A:7, II” for “for interest on payments not made when due” following “liability” in the third sentence.

77-A:9. Extension of Time for Returns.

For good cause, the commissioner may extend the time within which a taxpayer is required to file a return, and if such return is filed during the period of extension no penalty may be imposed for failure to file the return at the time required by this chapter, but the taxpayer shall be liable for interest and late payment charges as prescribed in RSA 21-J:28, 32, or 33. Failure to file the return during the period of the extension shall void the extension.

Source.

1970, 5:1. 1971, 515:10. 1973, 544:9. 1981, 445:10; 465:4.

1982, 42:98. 1983, 441:4. 1985, 204:11. 1991, 163:19, eff. May 27, 1991.

Amendments

—1991. Deleted “or late payment charge” following “penalty”, inserted “and late payment charges” following “interest” and added “32, or 33” following “21-J:28” in the first sentence and added the second sentence.

—1985. Rewritten to the extent that a detailed comparison would be impracticable.

—1983. Substituted “of 1-¼ percent per month” for “determined by the commissioner under RSA 71-A:11, XIII” following “rate” in the second sentence and made other minor stylistic changes.

—1982. Substituted “determined by the commissioner under RSA 71-A:11, XIII” for “of 1-½ percent per month” following “rate”.

—1981. Chapters 445 and 465 inserted “or late payment charge” following “penalty” and “at the rate of 1-½ percent per month” following “interest”.

—1973. Substituted “commissioner” for “commission”.

—1971. Inserted “or late payment charge” following “penalty” and “at the rate of ten percent per year” following “interest”.

Effective date of amendments

—1985 Amendment. 1985, 204:24, provided that 1985, 204:11, would take effect when the reorganized department of revenue administration became operational on the date set according to 1983, 372:5, II. Pursuant to 1983, 372:5, II, the joint committee on implementation of reorganization and the governor determined the effective date upon which the department became operational to be Jan. 1, 1986.

NOTES TO DECISIONS

Denial of extension

Where taxpayer's request for an automatic extension of time in which to file its return was denied by the board of taxation for failure to submit the estimated tax due, and the tax regulations promulgated pursuant to this section explicitly required that the business organization remit with the request for an extension 100% of the business profits tax tentatively determined to be due, the board had the authority to deny the request for extension and impose penalties. Appeal of Steele Hill Development, Inc., 121 N.H. 881, 435 A.2d 1129, 1981 N.H. LEXIS 426 (1981).

77-A:10. Corrections.

Each taxpayer shall report to the commissioner of revenue administration any change in the amount of its gross business profits as finally determined by the United States Internal Revenue Service with respect to any previous year for which the taxpayer has made a return under this chapter. Such a report shall be made not later than 6 months after the taxpayer has received notice that such change has finally been determined. Notwithstanding any other provision of law, a taxpayer reporting a correction pursuant to this section shall be given notice by the department of any adjustment to the tax due with respect to such correction within 6 months of the filing of the report.

Source.

1970, 5:1. 1973, 544:9. 1991, 163:20, eff. May 27, 1991.

Amendments

—1991. Substituted “6 months” for “the due date of the

next annual return” following “later than” in the second sentence and added the third sentence.

—1973. Substituted “commissioner of revenue administration” for “commission” in the first sentence.

77-A:11. Taxpayer Records.

Every business organization shall:

I. Keep such records as may be necessary to determine the amount of its liability under this chapter;

II. Preserve such records for the period of 3 years or until any litigation or prosecution hereunder is finally determined;

III. Make such records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times during regular business hours. Whoever violates the provisions of this section shall be subject to the penalties imposed under RSA 21-J:39.

Source.

1970, 5:1. 1973, 528:21; 544:9, 11, III. 1991, 163:21, eff. May 27, 1991. 1996, 154:4, eff. July 1, 1996.

Amendments

—1996. Paragraph III: Deleted “his” preceding “authorized agents” in the first sentence.

—1991. Paragraph III: Substituted “subject to the penalties imposed under RSA 21-J:39” for “guilty of a misdemeanor if a natural person, or guilty of a felony if any other person” following “shall be” in the second sentence.

—1973. Chapter 528 added the second sentence of par. III and deleted the undesignated paragraph.

Chapter 544 substituted “commissioner” for “commission” in the first sentence of par. III.

Cross References.

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

77-A:12. Failure to Make Returns; False Returns or Records.

[Repealed 1991, 163:43, XI, eff. May 27, 1991.]

Former section(s).

Former RSA 77-A:12, relating to penalties for failure to make returns, false returns, and records, was derived from 1970, 5:1 and 1973, 528:22. See now RSA 21-J:31, 39.

77-A:13. Adjustments; Procedure.

[Repealed 1991, 163:43, XII, eff. May 27, 1991.]

Former section(s).

Former RSA 77-A:13, relating to procedure for adjustment of tax assessment, was derived from 1970, 5:1; 1973, 544:9; 1977, 574:3; 1981, 445:11, 465:5; 1982, 42:99; 1983, 441:5; and 1985, 204:12. See now RSA 21-J:28-b.

77-A:14. Appeal.

[Repealed 1991, 163:43, XIII, eff. May 27, 1991.]

Former section(s).

Former RSA 77-A:14, relating to appeal of tax adjustment, was derived from 1970, 5:1; 1973, 544:14, III; and 1983, 394:5. See now RSA 21-J:28-b.

77-A:15. Administration.

I. The commissioner shall collect the taxes, interest, additions to tax and penalties imposed under this chapter. The commissioner shall determine the expense of administration of this chapter and shall certify and pay over to the state treasurer the amount of remaining balance of the funds collected under this chapter after the expenses of administration have been deducted.

II. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to:

(a) The administration of the business profits tax; and

(b) The recovery of any tax, interest on tax, or penalties imposed by this chapter or by RSA 21-J.

III. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax or the penalties imposed by this chapter.

IV. In the collection of the tax imposed by this chapter, the commissioner may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes, except that the tax imposed by this chapter shall not take precedence over prior recorded mortgages. The commissioner shall also have all of the duties imposed upon the tax collectors by RSA 80 that are applicable. The provisions of RSA 80:26 apply to the sale of land for the payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state. If the state purchases the land, the state treasurer shall certify the purchase to the governor, and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

V, VI. [Repealed.]

Source.

1970, 5:1; 57:2, 5. 1973, 544:9, 11. 1975, 439:34, VIII. 1977, 118:1. 1979, 446:5. 1981, 128:18, 19; 445:12. 1991, 163:22, 43, XIV, eff. May 27, 1991. 1996, 154:5, eff. July 1, 1996.

Amendments

—1996. Paragraph IV: Deleted “to him” following “applicable” in the second sentence and substituted “a” for “his” following “shall draw” in the fourth sentence.

—1991. Paragraph II(b): Substituted “this chapter or by RSA 21-J” for “RSA 77-A”.

Paragraph V: Repealed.

Paragraph VI: Repealed.

—1981. Paragraph I: Added by ch. 445.

Paragraph II: Rewritten by ch. 445 to the extent that a detailed comparison would be impracticable.

Paragraph III: Chapter 445 deleted the first sentence.

Chapter 128:18 rewrote the paragraph.

Paragraph III-a: Added by ch. 128:19; those provisions are now covered by par. III as amended by ch. 445.

Paragraph IV: Chapter 445 rewrote the first sentence.

Paragraph V: Chapter 445 substituted “under RSA 77-A:13” for “by this chapter” following “authorized” in the first sentence.

Paragraph VI: Substituted “of the hearing” for “thereof” following “date”.

—1979. Paragraph VI: Substituted “first class” for “certified” preceding “mail”, “but” for “and” following “taxpayer”, inserted “notice” following “hearings” and added “and by certified mail” following “thereof”.

—1977. Paragraph IV: Inserted “except that the business profits tax shall not take precedence over prior recorded mortgages” following “taxes” and substituted “he” for “it” preceding “has all” in the first sentence.

—1975. Paragraph I: Repealed.

—1973. Chapter 544:9 substituted “commissioner” for “commission” wherever it appeared.

Chapter 544:11 rewrote par. III.

—1970. Paragraph I: Rewritten by ch. 57:2 to the extent that a detailed comparison would be impracticable.

Paragraph V: Chapter 57:5 deleted “examination, investigation or” preceding “hearing” in the first sentence.

Cross References.

Depositions in civil actions, see RSA 517.

Witness fees, see RSA 516:16 et seq.

NOTES TO DECISIONS**Cited:**

Cited in Appeal of Steele Hill Development, Inc., 121 N.H. 881, 435 A.2d 1129, 1981 N.H. LEXIS 426 (1981).

77-A:16. Confidentiality of Department of Revenue Administration Records.

[Repealed 1977, 203:2, eff. Aug. 13, 1977, superseded by RSA 71-A:11-a.]

Former section(s).

Former RSA 77-A:16, relating to confidentiality of records of the department of revenue administration, was derived from 1970, 5:1; 1971, 515:11, 12; and 1973, 528:20, 544:10. See now RSA 21-J:14.

77-A:17. Preference.

[Repealed 1991, 163:43, XV, eff. May 27, 1991.]

Former section(s).

Former RSA 77-A:17, relating to preference in distribution of taxpayer's assets, was derived from 1910, 5:1.

77-A:18. Certifications for Dissolution, Withdrawal and Good Standing.

I. (a) No corporation and no limited liability company organized under any law of this state may transfer property to its shareholders pursuant to RSA 293-A:14.05(a) or to its members and managers pursuant to RSA 304-C:58 until all taxes, interest and penalties imposed upon the corporation or limited liability company under this chapter have been fully paid and a certificate of dissolution shall have been obtained from the commissioner of revenue administration that no returns, tax, interest, or penalties for taxes administered by the department are due and unpaid.

(b) A corporation or limited liability company wishing to transfer property to its shareholders pursuant to RSA 293-A:14.05(a) or to its

members or managers pursuant to RSA 304-C:58 shall submit a written request containing the complete corporate or limited liability company name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the corporation's or limited liability company's records, the commissioner determines that no returns, tax, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a certificate in accordance with subparagraph (a).

II. A business organization wishing to obtain a statement for withdrawal, in accordance with RSA 293-A:15.20(b)(6) or RSA 304-C:68, shall submit a written request containing the complete corporate or limited liability company name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the business organization's records, the commissioner determines that no returns, tax, interest or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement for withdrawal for the purposes required under RSA 293-A:15.20(b)(6) or RSA 304-C:68.

III. A business organization wishing to obtain a statement that it is in good standing with the department of revenue administration shall submit a written request containing the complete corporate or limited liability company name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the business organization's records, the commissioner determines that no returns, tax, interest or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement of good standing.

Source.

1970, 5:1. 1973, 544:9. 1989, 408:10. 1992, 255:2. 1993, 313:11, eff. July 1, 1993.

Amendments

—1993. Paragraph I(a): Inserted “and no limited liability company” preceding “organized” and “or to its members and managers pursuant to RSA 304-C:58” following “RSA 293-A:14.05(a)”, deleted “and” following “all taxes”, inserted “and penalties” preceding “imposed” and “or limited liability company” following “corporation”.

Paragraph I(b): Inserted “or limited liability company” preceding “wishing”, “or to its members or managers pursuant to RSA 304-C:58” following “RSA 293-A:14.05(a)” and “or limited liability company” following “corporate” in the first sentence and inserted “or limited liability company's” preceding “records” in the second sentence.

Paragraph II: Inserted “RSA 304-C:68” following “RSA 293-A:15.20(b)(6)” and “or limited liability company” following “corporate” in the first sentence and added “or RSA 304-C:68” following “RSA 293-A:15.20(b)(6)” in the second sentence.

Paragraph III: Inserted “or limited liability company” following “corporate” in the first sentence.

—1992. Paragraph I(a): Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph I(b): Substituted “transfer property to its shareholders pursuant to RSA 293-A:14.05(a)” for “dissolve” preceding “shall submit” in the first sentence and “certificate” for “statement” following “prepare a” in the third sentence.

Paragraph II: Substituted “RSA 293-A:15.20(b)(6)” for “RSA 293-A:126, I(f)” in the first and third sentences.

—1989. Rewrote the section catchline, designated the existing provisions of the section as par. I(a), substituted “statement” for “certificate” following “without a” and “returns, tax, interest, or penalties for taxes administered by the department” for “taxes and interest imposed by this chapter” preceding “are due” in the second sentence of that paragraph, and added pars. I(b), II and III.

—1973. Substituted “commissioner of revenue administration” for “commission” in the second sentence.

Severability

—1989 amendment. 1989, 408 was subject to a severability clause. See 1989, 408:109.

77-A:19. Lien for Tax.

[Repealed 1991, 163:43, XVI, eff. May 27, 1991.]

Former section(s).

Former RSA 77-A:19, related to liens on real estate, was derived from 1971, 515:13 and 1987, 47:1. See now RSA 21-J:28-c.

77-A:20. Distribution of Increase in Revenue.

[Repealed 1981, 568:122, III, eff. July 1, 1984.]

Former section(s).

Former RSA 77-A:20, relating to distribution of increased revenue amounts, was derived from 1977, 593:5 and 1981, 568:122.

77-A:20-a. Distribution of Funds.

I. The commissioner shall determine the additional amounts of revenue produced by an increase of 1.5 percent in the rate of tax imposed by RSA 77-A:2 for each fiscal year and shall certify such amounts to the state treasurer by October 1 of that year for deposit in the education trust fund established by RSA 198:39.

II. The commissioner shall make quarterly estimates of the amount of additional revenues that will be produced by the increase in tax rate for the next fiscal year and shall certify such amounts to the state treasurer for deposit in the education trust fund established by RSA 198:39. Such estimates shall be certified on June 1, September 1, December 1, and March 1 of each year.

Source.

1999, 17:20, eff. April 29, 1999. 2001, 158:20, eff. July 1, 2001.

Amendments

—2001. Paragraph I: Substituted “1.5 percent” for “one percent”.

Contingency; constitutional amendment; reenactment of laws.

1999, 17:57, eff. April 29, 1999, provided: "If voters of the state adopt an amendment to the New Hampshire Constitution which substantially relates to the role of the general court in determining the nature and means for funding public education, then the provisions of this act not relative to the education property tax shall be without effect as of July 1 following such adoption.

"If such constitutional amendment is adopted, the provisions of this act relative to the education property tax shall be without effect as of April 1 following such adoption.

"If such constitutional amendment is adopted, the rate of the real estate transfer tax in RSA 78-B:1, I shall revert to the rate imposed by section 32 of this act, unless specifically amended or repealed by an act of the legislature.

"Upon the proclamation of the adoption of such constitutional amendment, the director of legislative services is authorized to make changes to the Revised Statutes Annotated mentioned above."

77-A:21. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect any other provision or the application of such provision to other persons or circumstances, and to this end the provisions of this chapter are severable.

Source.

1981, 445:13, eff. July 1, 1981.

CHAPTER 77-E

BUSINESS ENTERPRISE TAX

Section	
77-E:1.	Definitions.
77-E:2.	Imposition of Tax.
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77-E:12.	Certifications for Dissolution, Withdrawal, and Good Standing.
77-E:13.	Application of Credit for Business Enterprise Tax Against Business Profits Tax.
77-E:14.	Distribution of Funds.

Severability of enactment.

1993, 350 was subject to a severability clause. See 1993, 350:40.

Applicability of enactment.

1993, 350:43, I, eff. July 1, 1993, provided that the enactment of this chapter by section 19 of the act shall apply to returns and taxes and reports and fees due on account of taxable periods ending on or after July 1, 1993; in the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the Internal Revenue Code, which is classified to 26 USCS 441, and the fiscal year of which ends on the last day of the week nearest to June 30,

1993, the taxable period shall be deemed to have ended on June 30, 1993, for the purpose of 1993, 350.

Credit against business enterprises tax of estimated payments made under RSA 84 prior to July 1, 1993.

1993, 350:32, eff. July 1, 1993 provided: "Estimated payments of tax under RSA 84 made prior to the effective date of the repeal of RSA 84 [July 1, 1993] and applying to returns or reports that would have been due on or after July 1, 1993, shall be allowed as a credit against the tax due under RSA 77-E."

Cross References.

Business profits tax, generally, see RSA 77-A:1 et seq.

Community reinvestment and opportunity zones, see RSA 162-N.

Franchise tax credit for business enterprises taxes imposed under this chapter, see RSA 83-C:2-a.

Insurance premium tax credit for taxes imposed under this chapter, see RSA 400-A:34-a.

Interest on unpaid taxes, see RSA 21-J:28.

Penalty for failure to file or for underpayments of estimated tax, see RSA 21-J:32.

Penalty for failure to pay taxes, see RSA 21-J:33.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "The Policy and Structure of the Business Enterprise Tax," see 34 N.H.B.J. 5 (1993).

77-E:1. Definitions.

In this chapter:

I. "Accumulated revenues and profits" means:

(a) In the case of a corporation, other than a subchapter S corporation, the amount determined to be earnings and profits for federal income tax purposes; or

(b) In the case of all other business enterprises, including subchapter S corporations, the total undistributed revenues of the enterprise from whatever source derived, except that no distribution of capital, whether in liquidation or otherwise, shall be included in the enterprise value tax base.

II. "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, income, revenue or advantage, whether direct or indirect, to the business enterprise or to others, but shall not include the services rendered by an employee to an employer or services as a director of a corporation. Although an activity of an enterprise may be incidental to another of its business activities, each activity shall be considered to be business engaged in or carried on within the meaning of this chapter. Notwithstanding any other provision of this paragraph, a holder of an ownership interest in a qualified investment company as defined in RSA 77-E:1, XIV, shall not be deemed to be carrying on any business activity within this state due solely to

its holding an ownership interest in such qualified investment company.

III. "Business enterprise" means any profit or nonprofit enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, business trust, real estate trust or other form of organization engaged in or carrying on any business activity within this state, except such enterprises as are expressly made exempt from income taxation under section 501(c)(3) of the United States Internal Revenue Code to the extent such enterprise does not engage in any business activity constituting unrelated business activity as defined by section 513 of the United States Internal Revenue Code. Each business enterprise under this definition shall be subject to the tax imposed under RSA 77-E as a separate entity except that trusts treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their owners, and such owners shall be subject to the tax thereon to the extent any such owners would be considered a business enterprise hereunder notwithstanding the existence of the trust. The use of consolidated returns as defined in the United States Internal Revenue Code or of combined reporting is not permitted. Notwithstanding any other provision of this paragraph, an enterprise shall not be characterized as a business enterprise and shall be excluded from taxation at the entity level if it is a qualified investment company as defined in RSA 77-E:1, XIV.

IV. "Commissioner" means the commissioner of revenue administration.

V. "Compensation" means all wages, salaries, fees, bonuses, commissions or other payments paid or accrued in the taxable period on behalf of or for the benefit of employees, officers, or directors of the business enterprise and subject to or specifically exempt from withholding under section 3401 of the United States Internal Revenue Code except such payments as are made expressly exempt from withholding under sections 3401(a)(1), (9), (10), (13), (14), (15), (16), (18), (19), and (20); the amount of any deduction taken under RSA 77-A:4, III in the taxable period; and any net earnings from self-employment subject to tax under section 1401 of the United States Internal Revenue Code to the extent not included in the amount of any deduction taken under RSA 77-A:4, III in the taxable period.

VI. "Dividends" means any distribution of money or property, other than the distribution of newly issued stock of the same enterprise, to the owners of a business enterprise with respect to their ownership interest in such enterprise from the accumulated revenues and profits of the enterprise. The term "dividends" shall not include:

(a) Distributions of money or property to beneficiaries of a trust qualified under section

401 of the United States Internal Revenue Code;

(b) Cash or non-cash payments of life, sickness, accident, or other benefits to members or their dependents or designated beneficiaries from a voluntary employee's beneficiary association qualified under section 501(c)(9) of the United States Internal Revenue Code;

(c) Distributions of money or property to participants from any common trust fund as defined under section 584 of the United States Internal Revenue Code;

(d) Policyholder dividends as defined under section 808 of the United States Internal Revenue Code, to the extent such dividends are not reduced pursuant to section 809 of the United States Internal Revenue Code;

(e) Payment of interest on deposits of depositors of a mutual bank or credit union; or

(f) Distributions of money or property to or on behalf of beneficiaries of a trust which is either subject to taxation under section 641 or described in section 664 of the United States Internal Revenue Code, provided that, this subparagraph shall apply only to the extent that such trust limits its activities to personal investment activities which do not constitute business activities, and those incidental to or in support of such personal investment activities.

VII. "Employee" means an employee as defined in section 3401(c) of the United States Internal Revenue Code. Any person from whom an employer is required to withhold for federal income tax purposes shall prima facie be deemed an employee.

VIII. "Employer" means an employer as defined in section 3401(d) of the United States Internal Revenue Code. Any person required to withhold for federal income tax purposes shall prima facie be deemed an employer.

IX. "Enterprise value tax base" means the sum of all compensation paid or accrued, interest paid or accrued, and dividends paid by the business enterprise, before special adjustments provided in RSA 77-E:3 or apportionment as provided in RSA 77-E:4.

X. "Gross business receipts" means all income for federal income tax purposes from whatever source derived in the conduct of business activity, including but not limited to gross proceeds from sales, compensation for rendering services, gross proceeds realized from trading in stocks, bonds, or other evidences of indebtedness, gross proceeds realized from sale of assets used in trade or business, interest, discount, gross rents, royalties, fees, commissions, dividends, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense paid or accrued and without any deduction on account of losses. In the case of non-profit enterprises not required to pay income taxes, the sum of all revenues derived in the conduct of business activity, includ-

ing but not limited to the items included in the preceding sentence. Any receipts that would otherwise be considered "gross business receipts" received by an enterprise that constitutes a qualified trust under section 401, or is defined in section 501(c)(9), or section 584, of the United States Internal Revenue Code shall not be included in gross business receipts for purposes of this chapter.

XI. "Interest" means all amounts paid or accrued for the use or forbearance of money or property. The term "interest" shall not include amounts paid, credited or set aside in connection with reserves by insurers to fulfill policy and contractual responsibilities to policy holders or by voluntary employees' beneficiary associations qualified under section 501(c)(9) of the United States Internal Revenue Code to fulfill obligations to members.

XII. "Prescribed filing date" means the original statutory due date, or approved extended due date.

XIII. "Prescribed payment date" means the original statutory due date.

XIV. (a) "Qualified investment company" means:

(1) A regulated investment company as defined in section 851 of the United States Internal Revenue Code as defined in RSA 77-E:1, XVII;

(2) An organization that is an investment company under the Investment Company Act of 1940, as amended; or

(3) An organization that would be an investment company under the Investment Company Act of 1940, as amended, but for the exception from investment company status provided by section 3(c)(1) or 3(c)(7) of said Investment Company Act.

(b) A qualified investment company shall limit its activities to investment or other activities consistent with its organizational purpose and those incidental to or in support of such activities provided that any such exception from investment company status by reason of section 3(c)(7) is available only to issuers whose securities are owned by persons or organizations who are deemed under section 3(c)(7) or any order, regulation or interpretation thereunder not to require protection under the provisions of the Investment Company Act by reason of their size, nature, status, or sophistication. A business organization seeking qualified investment company status shall file an election pursuant to RSA 77-A:5-b.

XV. "Taxable enterprise value tax base" means the enterprise value tax base adjusted by the special adjustments provided in RSA 77-E:3 and then adjusted by the method of apportionment provided in RSA 77-E:4.

XVI. "Taxable period" means the calendar or fiscal year, or fractional part of a year, which the business enterprise uses for federal income tax purposes. If the business enterprise is not re-

quired to make and file a return for federal income tax purposes, taxable period means the calendar or fiscal year, or fractional part of a year, the enterprise has adopted for financial purposes.

XVII. "United States Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended, without the rules, regulations, forms, and procedures of the United States Internal Revenue Service. The rules, regulations, forms and procedures of the United States Internal Revenue Service may, however, be used by the commissioner of revenue administration in formulating rules for adoption under RSA 541-A. This definition shall be operative unless and until a specific statutory exception to its adoption is provided in this chapter, or until the application of one of its provisions is held to violate the New Hampshire constitution.

Source.

1993, 350:19, eff. July 1, 1993; 358:109, eff. at 12:01 a.m., July 1, 1993. 1996, 154:2. 1998, 163:7, eff. July 1, 1998. 2004, 143:6, eff. May 24, 2004.

References in text.

Section 501(c) of the United States Internal Revenue Code, referred to in pars. III, VI(b), X and XI, is classified to 26 USCS § 501(c).

Sections 513 and 671 of the United States Internal Revenue Code, referred to in par. III, are classified to 26 USCS §§ 513 and 671, respectively.

Section 3401 of the United States Internal Revenue Code, referred to in pars. V, VII and VIII, is classified to 26 USCS § 3401.

Section 1401 of the United States Internal Revenue Code, referred to in par. V, is classified to 26 USCS § 1401.

Section 401 of the United States Internal Revenue Code, referred to in par. VI(a), is classified to 26 USCS § 401.

Section 584 of the United States Internal Revenue Code, referred to in pars. VI(c) and X, is classified to 26 USCS § 584.

Sections 808 and 809 of the United States Internal Revenue Code, referred to in par. VI(d), are classified to 26 USCS §§ 808 and 809, respectively.

Sections 641 and 664 of the United States Internal Revenue Code, referred to in par. VI(f), are classified to 26 USCS §§ 641 and 664, respectively.

Section 851 of the United States Internal Revenue Code, referred to in par. XIV(a)(1), is classified to 26 USCS § 851.

The Investment Company Act of 1940, referred to in par. XIV(a)(2), is classified to 15 USCS § 80a-1 et seq.

Section 3(c)(1) and (c)(7) of the Investment Company Act of 1940, referred to in par. XIV(a)(3), is classified to 15 USCS § 80a-3(c)(1) and (c)(7), respectively.

Amendments

—2004. Paragraph XIV: Made minor stylistic changes in subpars. (a)(2) and (3) and deleted subpar. (a)(4) and rewrote subpar. (b).

—1998. Paragraph XIV: Rewritten to the extent that a detailed comparison would be impracticable.

—1996. Paragraph XIV: Rewritten to the extent that a detailed comparison would be impracticable.

—1993. Paragraph VI: Deleted "or" following "Revenue Code" at the end of subpar. (d), added "or" following "union" at the end of subpar. (e) and added subpar. (f).

Effective date of amendments

—1996. 1996, 154:7, eff. July 1, 1996, provided: "Sections 1 and 2 of this act [which amended par. XIV of this section and RSA 77-A:1, XXI, respectively] shall not take effect until July 1, 1996, at the earliest and unless and until the United States

Congress enacts 3(c)(7) of the Investment Company Act of 1940 [to be codified at 15 USCS § 80a-3(c)(7).]

The National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, which includes the amendment of section 3(c)(7) of the Investment Company Act of 1940, was approved by Congress on October 1, 1996 and signed into law on October 11, 1996. Pursuant to Pub. L. No. 104-290, § 209(e), the amendment to the Investment Company Act of 1940, 15 USCS § 80a-3(c)(7), will take effect on the earlier of 180 days after the date of enactment [April 19, 1997] or the date on which the rulemaking required under Pub. L. No. 104-290 § 209(d)(2) is completed. Pub. L. No. 104-290 § 209(d)(2) provided: "Not later than 180 days after the date of enactment of this Act, the [Securities and Exchange] Commission shall prescribe rules defining the term, or otherwise identifying, 'investments' for purposes of section 2(a)(51) of the Investment Company Act of 1940, as added by this Act."

Severability

—1993 amendment. 1993, 358 was subject to a severability clause. See 1993, 358:106.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

Applicability of 1998 amendment.

1998, 163:9, eff. July 1, 1998, provided that this act, which amended this section and RSA 77:4, 77-A:1, 77-A:4, enacted RSA 77:4-f and 77-A:5-b, and repealed RSA 77-A:2-c, shall apply for all taxable periods ending after June 30, 1998.

Transition period for repeal of subpar. XIV(a)(4).

2004, 143:9, eff. May 24, 2004, provided: "The provisions of RSA 77:4, VI, RSA 77:4-f, II, RSA 77-A:1, XXI(a)(4), RSA 77-A:1, XXIV and XXV, RSA 77-A:4, XVIII, RSA 77-A:5-b, and RSA 77-E:1, XIV(a)(4) shall remain in effect as enacted prior to the effective date of this act [May 24, 2004], for companies that qualified for qualified investment capital company status and submitted a valid election therefor prior to the effective date of this act."

77-E:2. Imposition of Tax.

A tax is imposed at the rate of $\frac{3}{4}$ of one percent upon the taxable enterprise value tax base of every business enterprise.

Source.

1993, 350:19, eff. July 1, 1993. 1999, 17:21, eff. July 1, 1999; 303:1, eff. July 16, 1999. 2001, 158:21, eff. July 1, 2001.

Amendments

—2001. Substituted " $\frac{3}{4}$ of one percent" for " $\frac{1}{2}$ of one percent" and deleted the second sentence.

—1999. Chapter 17 substituted " $\frac{1}{2}$ " for " $\frac{1}{4}$ " following "rate of" in the first sentence and deleted the former second sentence.

Chapter 303 added the present second sentence.

Applicability of enactment.

See note set out following the listing for sections of this chapter.

Applicability of 1999 amendment.

1999, 17:59, I, effective July 1, 1999, provided that section 21 of this act, which amended this section, shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 1999. In the case of any business organization or enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to June 30, 1999, the taxable period shall be deemed to have ended on June 30, 1999, for the purposes of this act.

Applicability of 2001 amendment.

2001, 158:28, eff. July 1, 2001, provided: "Sections 19 and 21 of this act [which amended this section and RSA 77-A:2],

shall apply to returns and taxes due on account of taxable periods ending on or after July 1, 2001. In the case of any business organization or enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to June 30, 2001, the taxable period shall be deemed to have ended on June 30, 2001, for the purposes of this act."

Contingency; constitutional amendment; reenactment of laws.

1999, 17:57, eff. April 29, 1999, provided: "If voters of the state adopt an amendment to the New Hampshire Constitution which substantially relates to the role of the general court in determining the nature and means for funding public education, then the provisions of this act not relative to the education property tax shall be without effect as of July 1 following such adoption.

"If such constitutional amendment is adopted, the provisions of this act relative to the education property tax shall be without effect as of April 1 following such adoption.

"If such constitutional amendment is adopted, the rate of the real estate transfer tax in RSA 78-B:1, I shall revert to the rate imposed by section 32 of this act, unless specifically amended or repealed by an act of the legislature.

"Upon the proclamation of the adoption of such constitutional amendment, the director of legislative services is authorized to make changes to the Revised Statutes Annotated mentioned above."

Cross References.

Imposition of business profits tax, see RSA 77-A:2.

77-E:3. Special Adjustments.

The following adjustments shall be made to the enterprise value tax base in determining taxable enterprise value tax base:

I. In the case of a business enterprise, the enterprise value tax base of which includes compensation derived from self-employment income subject to tax under section 1401 of the United States Internal Revenue Code, a deduction of such amounts of compensation as are retained for use in the business enterprise, except that no amount of compensation deducted under RSA 77-A:4, III shall be included in this deduction. The burden shall be upon the business enterprise to show that any amounts deducted have actually been retained for use in the business enterprise.

II. In the case of a business enterprise which is a corporation, a deduction of an amount equal to dividends received from another corporation which have previously been included in the payor corporation's taxable enterprise value tax base subject to taxation under this chapter and which payor corporation is, at the close of the day on which such dividend is received, a member of the same affiliated group as the corporation receiving the dividend. For purposes of this section, the term "affiliated group" shall have the meaning given such terms by section 1504(a) of the United States Internal Revenue Code, except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) thereof shall not apply.

III. In the case of a business enterprise which is not a corporation, a deduction of an amount equal to dividend distributions received from another business enterprise which have previ-

ously been included in the payor business enterprise's taxable enterprise value tax base subject to taxation under this chapter and which payor business enterprise is, at the close of the day on which such dividend is received, a member of the same affiliated group as the business enterprise receiving the dividend distribution. For purposes of this section, the term "affiliated group" shall be determined by rules adopted by the commissioner similar to those applicable to corporations in paragraph II.

Source.

1993, 350:19, eff. July 1, 1993.

References in text.

Section 1504 of the United States Internal Revenue Code, referred to in par. II, is classified to 26 USCS 1504.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "The Policy and Structure of the Business Enterprise Tax," see 34 N.H.B.J. 5 (1993).

[RSA 77-E:3-a repealed pursuant to 2007, 263:123, III, effective July 1, 2011; see prospective repeal note set out below.]

77-E:3-a. Credit.

The economic revitalization zone tax credit, as computed in RSA 162-N:6, shall be allowed against the tax due under this chapter.

Source.

2003, 301:4, eff. July 1, 2003. 2007, 263:122, eff. July 1, 2007.

Amendments.

—2007 Substituted "economic revitalization" for "CROP" preceding "zone tax credit" and "RSA 126-N:6" for "RSA 162-N:7".

Prospective repeal of section.

2007, 263:123, III, provides for the repeal of this section on July 1, 2011.

[RSA 77-E:3-b repealed pursuant to 2007, 271:6, II, effective July 1, 2013; see prospective repeal note set out below.]

77-E:3-b. Credit for Research and Development.

The unused portion of any research and development credit awarded by the commissioner under RSA 77-A:5, XIII shall be available to apply to the business enterprise tax.

Source.

2007, 271:2, eff. July 1, 2007.

Prospective repeal of section.

2007, 271:6, II, provides for the repeal of this section on July 1, 2013.

Severability of enactment.

2007, 271 was subject to a severability clause. See 2007, 271:4.

Applicability.

2007, 271:5, eff. July 1, 2007, provided: "Sections 1-3 [which amended 77-A:5, and enacted this section and Ch. 162-P] of this act shall apply to taxes due on account of taxable periods ending on or after September 7, 2007."

77-E:4. Apportionment.

I. A business entity, the business activities of which are taxable both within and without this state and which is subject to a business privilege tax, a net income tax, a franchise tax measured by net income, a capital stock tax, or a tax of the type imposed by this chapter or is subject to the jurisdiction of another state to impose a business privilege tax, a net income tax, a franchise tax measured by net income, a capital stock tax, or a tax of the type imposed by this chapter shall apportion its enterprise value tax base so as to allocate to this state a fair and equitable proportion of such base. Except as provided in this section, such apportionment shall be made in the following manner:

(a) The portion of the base from compensation shall:

(1) Include the amount of any deduction taken pursuant to RSA 77-A:4, III, the amount relating to self-employment income and the amount relating to wages and salaries subject to or specifically exempt from withholding under section 3401 of the United States Internal Revenue Code except such payments as are made expressly exempt from withholding under sections 3401(a)(1), (9), (10), (13), (14), (15), (16), (18), (19), and (20); and

(2) Be apportioned to this state as a percentage of total compensation paid by the business enterprise to employees everywhere as is paid by the business enterprise to employees for services rendered within this state. Such compensation is deemed to be disbursed for services in this state if the service is performed entirely within this state, or if the service is performed both within and without this state and the service performed without this state is incidental to the service within this state, or some of the service is performed in this state and (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state, or (B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual performing such service resides within this state.

(b) The portion of the base from interest shall be apportioned by multiplying the percentage of value of the total real and tangible personal property owned and employed by the business enterprise everywhere as is owned and

employed by it in business activities in this state. Property owned by the business enterprise shall be valued at its original cost.

(c) The portion of the base from dividends shall be apportioned on the basis of the 3 following factors, giving equal weight to each, and applying the average of the 3 percentages to the dividends:

(1) The compensation apportionment factor in subparagraph (a)(2) of this section;

(2) The interest apportionment factor in subparagraph (b) of this section; and

(3) The percentage of the total sales, including charges for services, made by the business enterprise everywhere as is made by it within this state. Sales of tangible personal property are made in this state if the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of free on board point or other conditions of sale, or the property is shipped from an office, store, warehouse, factory or other place of storage in this state and (A) the purchaser is the United States government, or (B) the business enterprise is not taxable in the state of the purchaser. Sales other than sales of tangible personal property are in this state if the revenue-producing activity is performed in this state, or the revenue-producing activity is performed both in and outside this state and a greater proportion of the revenue-producing activity is performed in this state than in any other state, based on costs of performance.

II. If the method of apportionment in paragraph I does not fairly represent the business enterprise's business activity in this state, the business enterprise may petition for, or the commissioner may require, in respect to all or any part of the business enterprise's business activity, if reasonable:

(a) The exclusion of any one or more of the apportionment factors;

(b) The inclusion of one or more additional apportionment factors which will fairly represent the business enterprise's business activity in the state; or

(c) The employment of any other method to effect an equitable apportionment of the business enterprise's enterprise value tax base.

Source.

1993, 350:19, eff. July 1, 1993.

References in text.

Section 3401 of the United States Internal Revenue Code, referred to in par. I(a)(1), is classified to 26 USCS 3401.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "The Policy and Structure of the Business Enterprise Tax," see 34 N.H.B.J. 5 (1993).

77-E:5. Returns.

I. Every business enterprise having gross business receipts in excess of \$150,000 as defined by RSA 77-E:1, X, during the taxable period or the enterprise value tax base of which is greater than \$75,000, shall, on or before the fifteenth day of the third month in the case of enterprises required to file a United States corporation tax return, and the fifteenth day of the fourth month in the case of all other business enterprises, following expiration of its taxable period, make a return to the commissioner. All returns shall be signed by the business enterprise or by its authorized representative, subject to the pains and penalties of perjury and the penalties provided in RSA 21-J:39.

II. Every business enterprise shall in addition file a declaration of its estimated business enterprise tax for its subsequent taxable period; provided, however, if the estimated tax is less than \$200, a declaration need not be filed; and provided further that a declaration shall be filed at the end of any quarter thereafter in which estimated tax exceeds \$200. The declaration shall be filed when payments are due under RSA 77-E:6.

Source.

1993, 350:19, eff. July 1, 1993. 1996, 235:2, eff. July 1, 1996. 2001, 158:22, eff. July 1, 2001.

Amendments

—2001. Paragraph I: Substituted "\$150,000" for "\$100,000" and "\$75,000" for "\$50,000" in the first sentence.

—1996. Designated the existing text of the section as par. I and added par. II.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

Applicability of 1996 amendment.

1996, 235:6, I, eff. June 10, 1996, provided that the amendment to this section, by section 2 of the act, shall apply to returns and taxes due on account of taxable periods ending on and after Jan. 1, 1997.

Cross References.

Filing of business profits tax reports, see RSA 77-A:6.

77-E:5-a. Election of Qualified Investment Company Status.

Business organizations that have elected qualified investment company status pursuant to RSA 77-A:5-b shall be qualified investment companies for the purposes of this chapter for the tax period or periods corresponding to the election.

Source.

2004, 143:7, eff. May 24, 2004.

77-E:6. Payments Due With Returns.

I. All business enterprises required under RSA 77-E:5, II to make payments of estimated tax shall make such payments in installments as follows: 25 percent is due and payable on the

fifteenth day of the fourth month of the subsequent taxable year; 25 percent is due and payable on the fifteenth day of the sixth month of the subsequent taxable year; 25 percent is due and payable on the fifteenth day of the ninth month of the subsequent taxable year; and 25 percent is due and payable on the fifteenth day of the twelfth month of the subsequent taxable year.

II. If the return required by RSA 77-E:5, I shows an amount to be due, such amount is due and payable on the prescribed payment date. If such return shows an overpayment of the tax due, the commissioner shall refund such overpayment to the business enterprise or shall allow the enterprise a credit against a subsequent payment or payment due, to the extent of the overpayment, at the enterprise's option.

Source.

1993, 350:19, eff. July 1, 1993. 1996, 235:3, eff. July 1, 1996.

Amendments

—1996. Added a new par. I, and designated the existing text of the section as par. II and substituted "RSA 77-E:5, I" for "RSA 77-E:5" in the first sentence of that paragraph.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

Applicability of 1996 amendment.

1996, 235:6, I, eff. June 10, 1996, provided that the amendment to this section, by section 3 of the act, shall apply to returns and taxes due on account of taxable periods ending on and after Jan. 1, 1997.

Cross References.

Penalty for underpayment of estimated tax, see RSA 21-J:32.

77-E:7. Additional Returns.

When the commissioner has reason to believe that a business enterprise failed to file a return or to include any part of its enterprise value tax base in a filed return, the commissioner may require the enterprise to file a return or a supplementary return showing such additional information as the commissioner prescribes. Upon the receipt of the supplementary return, or if none is received within the time set by the commissioner, the commissioner may find and assess the amount due upon the information that is available. The making of such additional return does not relieve the business enterprise of any penalty for failure to make a correct original return or relieve it from liability for interest imposed under RSA 21-J:28 or any other additional charges imposed by the commissioner.

Source.

1993, 350:19, eff. July 1, 1993.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

77-E:8. Extension of Time for Returns.

For good cause, the commissioner may extend

the time within which a business enterprise is required to file a return, and if such return is filed during the period of extension no penalty or late payment charge may be imposed for failure to file the return at the time required by this chapter, but the enterprise shall be liable for interest and late payment charges as prescribed in RSA 21-J:28 and RSA 21-J:33. Failure to file the return during the period of the extension shall void the extension.

Source.

1993, 350:19, eff. July 1, 1993.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

77-E:9. Corrections.

Each business enterprise shall report to the commissioner of revenue administration any change in the amount of its compensation, interest or dividends as finally determined by the United States Internal Revenue Service with respect to any previous year for which the business enterprise has made a return under this chapter. Such a report shall be made not later than 6 months after the business enterprise has received notice that such change has finally been determined. Notwithstanding any other provision of law, a business enterprise reporting a correction pursuant to this section shall be given notice by the department of any adjustment to the tax due with respect to such correction within 6 months after the filing of the report.

Source.

1993, 350:19, eff. July 1, 1993.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

77-E:10. Taxpayer Records.

Every business enterprise shall:

I. Keep such records as may be necessary to determine the amount of its liability under this chapter.

II. Preserve such records for the period of 5 years or until any litigation or prosecution under this chapter is finally determined.

III. Make such records available for inspection by the commissioner or authorized agents, upon demand, at reasonable times during regular business hours. Whoever violates the provisions of this section shall be subject to the penalties imposed under RSA 21-J:39.

Source.

1993, 350:19, eff. July 1, 1993.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

Cross References.

Corporate records and reports, see RSA 293-A:16.01 et seq.

77-E:11. Administration.

I. The commissioner shall collect the taxes, interest, additions to tax, and penalties imposed under this chapter and RSA 21-J.

II. The commissioner of revenue administration shall adopt rules, pursuant to RSA 541-A, relative to:

(a) The form of the return and the data which it must contain for the correct computation of gross business receipts and taxable enterprise value tax base attributable to this state and the tax assessed on it;

(b) The administration of the business enterprise tax;

(c) The recovery of any tax, interest on tax, additions to tax, or penalties imposed by RSA 77-E or RSA 21-J; and

(d) The implementation, interpretation, or specific application of any part of this chapter to particular business enterprises.

III. The commissioner may institute actions in the name of the state to recover any tax, interest on tax, additions to tax, or the penalties imposed by this chapter.

IV. In the collection of the tax imposed by this chapter, the commissioner may use all of the powers granted to tax collectors under RSA 80 for the collection of taxes, except that the tax imposed by this chapter shall not take precedence over prior recorded mortgages. The commissioner shall also have all of the duties imposed upon the tax collectors by RSA 80 that are applicable. The provisions of RSA 80:26 apply to the sale of land for payment of taxes due under this chapter, and the state treasurer is authorized to purchase the land for the state. If the state purchases the land, the state treasurer shall certify the purchase to the governor, and the governor shall draw a warrant for the purchase price out of any money in the treasury not otherwise appropriated.

Source.

1993, 350:19, eff. July 1, 1993. 1996, 154:6, eff. July 1, 1996.

Amendments

—1996. Paragraph IV: Substituted “a” for “his” preceding “warrant” in the fourth sentence.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

77-E:12. Certifications for Dissolution, Withdrawal, and Good Standing.

I. (a) No corporation organized under any law of this state may transfer property to its shareholders pursuant to RSA 293-A:14.05(a) until all taxes and interest imposed upon the corporation under this chapter have been fully paid and a certificate of dissolution shall have been obtained from the commissioner of revenue administration that no returns, tax, additions to tax, interest, or penalties for taxes

administered by the department are due and unpaid.

(b) A corporation wishing to transfer property to its shareholder pursuant to RSA 293-A:14.05(a) shall submit a written request containing the complete corporate name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the corporation's records, the commissioner determines that no returns, tax, additions to tax, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement in accordance with subparagraph (a).

II. A business enterprise wishing to obtain a statement for withdrawal, in accordance with RSA 293-A:15.20(b)(6) shall submit a written request containing the complete corporate name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the business enterprise's records, the commissioner determines that no returns, tax, additions to tax, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement for withdrawal as required under RSA 293-A:15.20(b)(6).

III. A business enterprise wishing to obtain a statement that it is in good standing with the department of revenue administration shall submit a written request containing the complete corporate name and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee shall be deposited into the general fund. If, after reviewing the business enterprise's records, the commissioner determines that no returns, tax, additions to tax, interest, or penalties for taxes administered by the department are due and unpaid, the commissioner shall prepare a statement of good standing.

Source.

1993, 350:19, eff. July 1, 1993.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

77-E:13. Application of Credit for Business Enterprise Tax Against Business Profits Tax.

If the business enterprise liable for taxes imposed by this chapter is a member of a unitary business within the meaning of RSA 77-A:1, XIV, then the entire amount of the taxes due under this chapter by the individual member of such unitary business shall be allowed as a credit pursuant to RSA 77-A:5, X, against such individual member's portion of the total tax

liability of the unitary business under RSA 77-A. In the event that the individual member's credit exceeds such member's portion of the total tax liability of the unitary business, the excess of such credit shall be allowed as a credit against any other individual member's tax liability under RSA 77-A, provided such other member is also subject to the tax imposed by this chapter. The tax liability of an individual member of a unitary business under RSA 77-A shall be determined by the following steps:

I. Determine a combined nexus group denominator for the property, payroll and sales factors by adding the property, payroll and sales factor numerators of the individual members of the combined group subject to tax under RSA 77-A.

II. Determine an individual apportionment percentage for each member of the combined group subject to tax under RSA 77-A by dividing such member's individual New Hampshire property, payroll and sales factor numerators by the combined nexus group denominators determined in paragraph I.

III. Apply the individual apportionment percentage, determined in paragraph II, to business profits tax liability of the water's edge combined group as determined in accordance with the provisions of RSA 77-A.

Source.

1993, 350:19, eff. July 1, 1993.

Severability

1993, 350 was subject to a severability clause. See 1993, 350:40.

Applicability of enactment.

See note set out following the listing of sections for this chapter.

Three-year business transition credit.

1993, 350:39, eff. July 1, 1993, provided:

"I. There shall be allowed as a credit against the tax due under RSA 77-E for the first tax period ending on or after July 1, 1993, and each of the 2 succeeding tax periods an amount equal to the business enterprise's business transition loss amount. Any business transition loss amount which is not fully utilized as a credit under this section with respect to one tax period may be carried forward for use against tax due under RSA 77-E for later tax periods. The total amount of allowable business transition credit: (a) shall not exceed the total amount of taxes due and paid by the business enterprise under RSA 77-A for taxable periods ending on or after January 1, 1987, and ending on or before June 30, 1990.

"II. For purposes of this transition section, business transition loss amount means the product of (a) the aggregate net operating loss carryover of a business enterprise determined pursuant to section 172 of the United States Internal Revenue Code attributable to taxable periods ending on or after June 1, 1991, and ending on or before June 30, 1992, and (b) with respect to each applicable taxable period, the rate of tax specified in RSA 77-A:2. In the case of a business enterprise which is not treated as a corporation under subchapter C of the United States Internal Revenue Code, business transition loss amount shall be based on the amount that would be determined under section 172 of the United States Internal Revenue Code if the business enterprise were a C corporation. For purposes of this definition, a business enterprise's aggregate net operating loss carryover shall not exceed that amount which is allocated to this state by application of the apportionment method described in RSA 77-A:3. In addition, a business enterprise's aggregate net operating loss carryover

shall not exceed that amount which was generated directly from operations of such business enterprise and not from operations of another enterprise which may be an affiliate. For purposes of this definition, the aggregate net operating loss carryover shall not be subject to the \$250,000 annual limitation established in RSA 77-A:4, XIII.

"III. Notwithstanding any other provision of RSA 77-A to the contrary, if a business organization applies the business transition credit to reduce tax due under RSA 77-E, the amount of net operating loss that may be carried forward under this section shall be reduced by an amount equal to (a) the amount of credit applied to reduce tax due under RSA 77-E, divided Notwithstanding any other provision of RSA 77-A to the contrary, if a business organization applies the business transition credit to reduce tax due under RSA 77-E, the amount of net operating loss that may be carried forward under this section shall be reduced by an amount equal to (a) the amount of credit applied to reduce tax due under RSA 77-E, divided by (b) the rate of tax specified in RSA 77-A:2 and applied for purposes of determining the business transition loss amount for each applicable tax period under this transition section.

"IV. The amount allowed as credit pursuant to RSA 77-A:5, X, for taxes paid under RSA 77-E shall be reduced by the amount of business transition credit utilized as a credit against the tax due under RSA 77-E.

"V. For purposes of this section any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to the ending of any taxable period specified in this section shall be deemed to have ended on the last day of such taxable period."

1993, 350:43, I, eff. July 1, 1993, provided that 1993, 350:39, which is set out in this note above, shall apply to returns and taxes and reports and fees due on account of taxable periods ending on or after July 1, 1993; in the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the Internal Revenue Code and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993 for the purposes of 1993, 350.

77-E:14. Distribution of Funds.

I. The commissioner shall determine the additional amounts of revenue produced by an increase of .50 percent in the rate of tax imposed by RSA 77-E:2 for each fiscal year and shall certify such amounts to the state treasurer by October 1 of that year for deposit in the education trust fund established by RSA 198:39.

II. The commissioner shall make quarterly estimates of the amount of additional revenues that will be produced by the increase in tax rate for the next fiscal year and shall certify such amounts to the state treasurer for deposit in the education trust fund established by RSA 198:39. Such estimates shall be certified on June 1, September 1, December 1, and March 1 of each year.

Source.

1999, 17:22, eff. April 29, 1999. 2001, 158:23, eff. July 1, 2001.

Amendments

—2001. Paragraph I: Substituted ".50 percent" for ".25 percent".

Contingency; constitutional amendment; reenactment of laws.

1999, 17:57, eff. April 29, 1999, provided: "If voters of the state adopt an amendment to the New Hampshire Constitu-

tion which substantially relates to the role of the general court in determining the nature and means for funding public education, then the provisions of this act not relative to the education property tax shall be without effect as of July 1 following such adoption.

"If such constitutional amendment is adopted, the provisions of this act relative to the education property tax shall be without effect as of April 1 following such adoption.

"If such constitutional amendment is adopted, the rate of the real estate transfer tax in RSA 78-B:1, I shall revert to the rate imposed by section 32 of this act, unless specifically amended or repealed by an act of the legislature.

"Upon the proclamation of the adoption of such constitutional amendment, the director of legislative services is authorized to make changes to the Revised Statutes Annotated mentioned above."

TITLE XII

PUBLIC SAFETY AND WELFARE

CHAPTER 162-A

BUSINESS FINANCE AUTHORITY

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162-A:28.	Exemption From Administrative Procedure Act and Rulemaking Authority.
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162-A:30.	Authorization to Accept State Money.
162-A:31.	Status of Authority Employees; Entitlement to Certain State Benefits.

Repeal and reenactment of chapter.

1992, 262:3, eff. May 15, 1992, provided for the repeal and reenactment of RSA 162-A. Original RSA 162-A, consisting of RSA 162-A:1-162-A:16, was derived from 1955, 254:1-10, 12-16; 1957, 237:1, RSA 162-A:12, 237:2; 1959, 136:1, 142:1; 1961, 263:10-12, 246:1, 4; 1963, 155:1-6; 1965, 228:3, 371:1-4; 1967, 308:1-7, 369:1; 1969, 430:1, 2; 1970, 10:1, 2; 1971, 534:1-5, 559:15; 1972, 44:1; 1985, 357:3-6; 1990, 140:2, III.

Cross References.

Business finance authority revenue bonds, see RSA 162-I.

Community development finance authority, see RSA 162-L.
Private activity bond limit, see RSA 162-M.

NOTES TO DECISIONS

Constitutionality

This chapter does not violate constitutional requirement that public funds shall not be devoted to private purposes. Opinion of the Justices, 103 N.H. 258, 169 A.2d 634, 1961 N.H. LEXIS 26 (1961). (Decided under prior law.)

RESEARCH REFERENCES

New Hampshire Code of Administrative Rules.

Rules of the Business Finance Authority, Bfa 100 et seq., New Hampshire Code of Administrative Rules Annotated.

162-A:1. Declaration of Need and Purpose.

It is declared that there is a statewide need for the preservation and development of business and industry for the betterment of the economy of the state and its inhabitants. It is the purpose of this chapter to provide for the preservation, establishment, and redevelopment of business and industry, together with adequate transportation, water, sewage and other necessary facilities, so as to provide and encourage orderly development, create or preserve employment opportunities, protect the physical environment, preserve or increase the social welfare or economic prosperity of the state or its political subdivisions, and promote the general welfare of the state's citizens. It is further declared that the business finance authority, created in this chapter shall be regarded as performing an essential governmental function in carrying out the provisions of this chapter.

Source.

1992, 262:3, eff. May 15, 1992.

162-A:2. Definitions.

In this chapter:

I. "Authority" means the business finance authority, formerly known as the industrial development authority and the industrial park authority.

II. "Board" means the board of directors of the authority.

III. "Bond" means any bond, note or other evidence of indebtedness issued by the authority under this chapter.

IV. "Borrower" means any business that receives a loan, a loan guarantee, or other assistance pursuant to this chapter.

V. "Business" means the carrying on of any business activity, whether as a corporation, partnership, limited partnership, sole proprietorship or otherwise, including all activities that are industrial, commercial, or recreational.

VI. "CAP" means the capital access program established by RSA 162-A:12.

VII. "CAP fund" means a fund established by the authority pursuant to RSA 162-A:12, which fund shall consist of contributions from the authority, the participating state bank or state credit union, and borrowers whose loans are to be secured by the fund.

VIII. "CAP loan" means a loan that is made to a business by a participating state bank or state credit union and is entitled to be secured by a CAP fund.

IX. "CAP participation agreement" means an agreement between the authority and a participating state bank or state credit union setting out the terms and conditions under which the authority will make contributions to a CAP fund established for the benefit of that participating state bank or state credit union and specifying the criteria for a loan to qualify as a CAP loan.

X. "Financial institution" means any bank, trust company, or other organization that is in the business of making loans to businesses, provided that such bank, trust company or other organization is duly organized under the laws of the United States or any state, and provided further that with respect to any organization that is not a bank or trust company, it is qualified to do business in New Hampshire.

XI. "Loan" means any arrangement involving an advance of money to a borrower in exchange for the borrower's promise to repay such money, with or without interest, including a sale and leaseback, a financing lease or a conditional sale.

XII. "Local development organization" means any local or regional development agency, authority, corporation, association, foundation or other entity, regardless of the name or manner of organization, provided it shall have as a principal function the promotion, encouragement, or development of business. The term "local development organization" shall include a town, city or county if such town, city or county has published written procedures for participating in economic development activities through the loaning of funds or the enhancement of credit.

XIII. "Participating state bank or state credit union" means any state bank or state credit union participating in the capital access program established by RSA 162-A:12.

XIV. "Project" means all property, rights, easements, licenses, patents, rights of way, and franchises deemed necessary or convenient for the carrying out of a business activity, and shall embrace all means of accomplishing the purposes of this chapter.

XV. "Project costs" means any costs or expenses reasonably incidental to a project and may, without limitation, include the costs of:

(a) Issuing bonds or notes to finance a project.

(b) Acquiring land, buildings, structures and facilities, whether by lease, purchase, construction, or otherwise.

(c) Acquiring rights in or over land, air, or water.

(d) Improving land and improving buildings, structures and facilities by remodeling, reconstruction, replacement, or enlargement.

(e) Acquiring and installing machinery and equipment.

(f) Obtaining professional or advisory services.

(g) Interest prior to and during construction and until one year after the completion of a project.

(h) Creating or making contributions to reserves for loans, loan guarantees and projects.

XVI. "State bank" means any bank or trust company organized under the laws of the United States, any state, or any foreign country that is authorized by law to make loans and accept deposits in New Hampshire.

XVII. "State credit union" means any credit union organized under the laws of the United States, any state, or any foreign country that is authorized by law to make loans and accept deposits in New Hampshire.

Source.

1992, 262:3. 1993, 335:13, eff. June 29, 1993. 1996, 189:5-7, eff. Aug. 2, 1996.

Amendments

—1996. Paragraphs VII-IX: Inserted "or state credit union" following "state bank".

Paragraph XIII: Inserted "or state credit union" following "state bank" in two places.

Paragraph XVII: Added.

—1993. Paragraph XII: Added the second sentence.

162-A:3. Authority Created.

There is hereby created the business finance authority, formerly operating and known as the industrial development authority, which shall be a body corporate and politic having a distinct legal existence separate from the state and not constituting a department of state government having the powers and jurisdiction enumerated in this chapter and such other and additional powers as shall be conferred upon it by the legislature. The authority is hereby deemed to be a public instrumentality and the exercise by the authority of the powers conferred upon it by the legislature shall be deemed and held to be the performance of public and essential governmental functions of the state.

Source.

1992, 262:3. 1993, 335:2, eff. June 29, 1993. 1997, 329:1, eff. Oct. 1, 1997.

Amendments

—1997. Rewritten to the extent that a detailed comparison would be impracticable.

—1993. Inserted "formerly operating and known as the industrial development authority" following "business finance authority".

162-A:4. Management.

I. The management of the authority shall be vested in a board of 14 directors, who shall serve without compensation. The governor, with the consent of the council, shall appoint 9 members of the board, who shall include an executive director of a regional planning commission and one elected or appointed local official. The governor shall designate one of the board members as chairperson. Each board member appointed by the governor shall hold office for 3 years, or until a successor has been appointed. The state treasurer shall serve as a voting ex officio member of the board. Two members of the house of representatives, who shall be appointed by the speaker of the house of representatives, and 2 members of the senate, who shall be appointed by the president of the senate, shall serve as nonvoting members of the board. A director serving as a member of the house of representatives or as a member of the senate shall serve for a term ending when the general court dissolves.

II. A director, officer, or employee of the authority shall not use his or her office for personal gain or act in a manner contrary to the public interest. A director shall abstain from voting on matters in which the director has a financial interest, whether personally or through a spouse or dependent. If in doubt, the director may submit a written request for advice to the chairperson, who shall make a ruling as to whether the director may vote on a matter.

Source.

1992, 262:3, eff. May 15, 1992. 1997, 329:2, eff. Oct. 1, 1997.

Amendments

—1997. Paragraph I: Substituted “chairperson” for “chairman” at the end of the third sentence, “voting” for “nonvoting” in the fifth sentence, “two” for “in addition, 2” in the sixth sentence, and made a minor stylistic change.

Paragraph II: Inserted “or her” preceding “office for personal gain” in the first sentence, substituted “the director” for “he” following “matters in which” in the second sentence, and “chairperson” for “chairman” in the third sentence.

Cross References.

Liability of board members, see RSA 162-A:25.

Meetings, see RSA 162-A:20.

Reports, see RSA 162-A:23.

OPINIONS OF THE ATTORNEY GENERAL

Claims against board members

Board members of business finance authority are entitled to indemnification and representation by the state for claims arising from official actions, except when they act in a willful and wanton manner. Op. Atty. Gen, Sept. 17, 1992.

162-A:5. Vacancy, Removal, or Suspension.

I. If a vacancy shall occur by death, resignation, or otherwise of a director appointed by the governor, then the governor, with the advice and consent of the council, shall fill the same for the unexpired term. The governor and council may at any time remove a director appointed by the governor for inefficiency, neglect of duty, or

malfeasance in office, but no such director shall be removed without a hearing, after notice in writing of the charges against the director. A director who is appointed to the board as a member of the house of representatives shall serve at the pleasure of the speaker of the house of representatives. A director who is appointed to the board as a member of the senate shall serve at the pleasure of the president of the senate.

II. If a director is appointed to the board as an executive director of a regional planning commission or as an elected or appointed local official and the director ceases to hold such office, the director shall continue as a director for the remainder of the unexpired term and shall be treated for purposes of RSA 162-A:4 as if the director continued to hold such office. If a director is appointed to the board as a member of the house of representatives or as a member of the senate and the director ceases to be a member of the house of representatives or the senate, such director shall also cease to be a director.

Source.

1992, 262:3, eff. May 15, 1992. 1997, 329:3, eff. Oct. 1, 1997.

Amendments

—1997. Paragraph I: Substituted “the director” for “him” following “charges against” at the end of the second sentence.

Paragraph II: Substituted “the director” for “he” in two places and “the” for “his” preceding “unexpired” in the first sentence and “such director” for “he” in the second sentence.

Cross References.

Removal of public officials generally, see RSA 4:1.

162-A:5-a. Administrative Officers; Compensation.

I. The board shall appoint an executive director, a senior credit officer, a chief financial officer, and other personnel determined by the board to be necessary to carry out the purposes of this chapter. The executive director, the senior credit officer, and the chief financial officer shall serve at the pleasure of the board and shall be qualified by reason of professional competence, education, and experience.

II. [Repealed.]

Source.

1993, 335:3, eff. June 29, 1993; 358:9, eff. July 8, 1993. 2001, 158:109, III, eff. Dec. 28, 2001.

Amendments

—2001. Paragraph II: Repealed.

—1993. Designated the existing provisions of the section as par. I and added par. II.

Severability

—1993 amendment. 1993, 358 was subject to a severability clause. See 1993, 358:106.

162-A:6. Incorporation; Powers.

The authority shall be a corporation in the state of New Hampshire and shall have powers to:

- I. Sue and be sued.
- II. Have a seal and alter the same at pleasure.
- III. Adopt and amend bylaws.
- IV. Adopt rules, under RSA 541-A, relative to:
 - (a) A description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.
 - (b) Procedures of the authority in carrying out its programs under this chapter or of the authority in issuing bonds pursuant to RSA 162-I.
 - (c) Procedures for the establishment of fees and charges.
- V. Develop, construct, and reconstruct business facilities.
- VI. Acquire, hold, lease, and dispose of real and personal property for its purposes.
- VII. Acquire in the name of the authority by gift, purchase, lease or otherwise, real property and rights or easements therein, deemed by it necessary or desirable for its purposes.
- VIII. Acquire, in the name of the authority, security by way of mortgage deed or otherwise any property, title to which may be in any corporation, partnership, limited partnership, individual or group of individuals, or other entity other than the authority and upon which projects may be developed or constructed as provided in this chapter. Such security may be acquired by the authority solely in its own name, with community development organizations, with other governmental entities, or with a non-governmental entity, whether operated for profit or as a charity. If the security is acquired with any other entity, then the authority shall act in conformance to RSA 387.
- IX. Sell or lease any property it may own.
- X. Make contracts with the United States or any agency thereof, the state of New Hampshire or any agency thereof, towns or cities, public corporations or bodies, private corporations, individuals or other entities.
- XI. Accept grants that will assist in the carrying out of its purposes under this chapter and to do any and all things necessary or convenient in order to avail itself of such aid.
- XII. Employ or retain as independent contractors such assistants, agents, consultants, accountants, or attorneys as it shall deem necessary or desirable for its purposes, notwithstanding any other provision of law.
- XIII. Borrow money, make and issue negotiable notes, bonds and other evidences of indebtedness or obligations of the authority and to secure the payment of such obligations or any part thereof by pledge of all or any part of, the revenue or assets of the authority.
- XIV. Develop or assist in the development of real property owned by any local development

corporation or foundation which has as its primary purpose the encouragement and development of business or industry.

XV. Develop performance indicators to measure the effectiveness of authority programs.

XVI. Make or acquire loans or advances, with or without interest, and whether or not secured by a mortgage, to businesses operating within the state.

XVII. Invest or deposit for its own account moneys it may receive or hold under this chapter or RSA 162-I. Such investment may include the guaranteed portion of loans guaranteed by the state under this chapter or RSA 162-I.

XVIII. Establish and contribute to CAP funds.

XIX. Maintain offices at such place within the state as it may designate.

XX. Renegotiate, refinance or foreclose, or contract for the foreclosure of, any mortgage or loan in default; waive any default or consent to the modification of the terms of any mortgage or loan; commence any action to protect or enforce any right conferred upon it by any law, mortgage, loan, contract or other agreement, and bid for and purchase property at any foreclosure or at any other sale, or acquire or take possession of any such property; temporarily operate or manage, lease, dispose of, or otherwise deal with property, in such manner as may be necessary or desirable to protect the interests of the state, the authority and the holders of the authority's bonds; all subject to any agreements with the state or with bondholders.

XXI. Institute any action or proceeding against the maker, payor or other party, hereafter referred to as the obligor, who is liable for the payment of any obligation, mortgage or loan held or made by the authority under the provisions of this chapter in any court of competent jurisdiction in order to enforce the provisions of this chapter, or to foreclose mortgages or loans, or to protect the public interest.

XXII. Procure insurance against any loss in connection with its property and other assets, in such amounts and from such insurer as it deems advisable.

XXIII. Take such other action as may be necessary or convenient to carry out its purposes and exercise its powers under this chapter.

XXIV. Acquire, invest in, pledge, or hold debt securities issued with respect to any transaction pursuant to this chapter. Nothing in this paragraph shall be interpreted to prohibit the authority from acquiring or holding equity securities in connection with arrangements to secure repayment of obligations with respect to any transaction pursuant to this chapter.

XXV. Enter into contracts to place the investments, loans, or bonds of the authority on such interest rate or cash flow basis as the authority may determine desirable, including without

limitation, contracts providing for interest rate exchanges, caps, floors, collars, options, puts, calls and other hedging transactions.

XXVI. Enter into contracts or agreements with lenders, borrowers, or other parties which may benefit from actions of the authority taken pursuant to this chapter, which agreements may provide for financial returns to the authority based on, or contingent with respect to, economic performance of such lenders, borrowers, or other parties.

Source.
1992, 262:3. 1993, 335:4, eff. June 29, 1993. 1995, 128:1, 2, eff. May 19, 1995.

Amendments
—1995. Paragraph XXIV: Added the second sentence.
Paragraph XXVI: Added.
—1993. Added pars. XXIV and XXV.

Adoption of emergency rules.
1992, 262:14, eff. May 15, 1992, provided: “The legislature declares that there is an urgent need for the programs created by sections 2-13 of this act [which repealed and reenacted RSA 162-A, amended RSA 162-I:1, 2, 8, 10, 12, 16, 162-J:11, 162-M:1-4, 233:6 and 387:17-a, and added RSA 162-I:9-b]. Therefore, notwithstanding any provisions of RSA 541-A to the contrary, the business finance authority may adopt emergency rules to implement the provisions of sections 2-13 of this act. The emergency rules authorized by this section shall remain effective until such time as the business finance authority adopts superseding rules under RSA 541-A. The business finance authority shall adopt interim rules implementing the provisions of sections 2-13 of this act no later than June 1, 1993, and shall commence permanent rulemaking implementing the provisions of sections 2-13 no later than December 31, 1993.”

Cross References.
Issuance of bonds by authority, see RSA 162-A:15.
Notification of office of investment and debt management of proposed bond issues, see RSA 6-B:3.

NOTES TO DECISIONS

Redevelopment finance guarantee
A guarantee to finance the redevelopment of an industrial building is within the powers granted to the industrial park authority, provided that the governor and council determine that it will be of public use and benefit. 1 N.H.Op.A.G. 160. (Decided under prior law.)

162-A:7. Aid to Local or Regional Development Organizations.

I. The authority may expend or loan money upon such terms and conditions as prescribed by the authority to acquire, develop, redevelop, construct, renovate, or expand real or personal property for business use. No expenditure or loan shall be made by the authority under this section unless it is with the approval of, or in cooperation with, a local development organization.
II. Prior to the expenditure or loan of any money under this section, the authority shall enter into one or more agreements with such organization to provide for the conditions on which the expenditures or loans will be made, the terms of repayment of such expenditure or loan, the time and manner of such repayment,

conditions under which the property is to be used by or leased to one or more businesses, the form and amount of security if any, to be pledged to the authority for such repayment, and such other provisions as the authority may determine are necessary or desirable. Repayment of any expenditure or loan made by the authority may be with or without interest and may take the form of cash, real or personal property, or services.

III. Any property acquired, developed, redeveloped, constructed, renovated, or expanded under this section may be leased by the authority or the local development organization, as appropriate, for business use, and under such terms and conditions as they shall deem appropriate. Any such lease may include options of the lessee to purchase the property, provided that the purchase price upon the exercise of any such option shall not be less than the amount necessary to reimburse the authority, with interest if applicable, for any unpaid balance of expenditures made by the authority for such property. Any lease shall obligate the lessee to pay all costs and expenses of upkeep, maintenance and operation of the property during the lease term.

IV. The authority shall not expend or loan any money or make a binding commitment to spend any money for a particular project under this section unless after a hearing the governor and council have made the findings specified in RSA 162-A:18.

Source.
1992, 262:3. 1993, 335:5, eff. June 29, 1993.

Amendments
—1993. Paragraph I: Inserted “or loan” following “expend” and “or personal” preceding “property” in the first sentence, deleted the former second sentence, and inserted “or loan” following “expenditure” in the new second sentence.
Paragraph II: Inserted “or loan” following “expenditure” in two places in the first sentence and in the second sentence, deleted “for property to be owned by a local development organization” following “section” and inserted “or loans” following “expenditures” in the first sentence and inserted “real or personal” preceding “property” in the second sentence.
Paragraph III: Substituted “expanded” for “expended” preceding “under this section” in the first sentence.
Paragraph IV: Inserted “or loan” following “expend”.

162-A:7-a. Guarantee of Loans to Local Development Organizations.

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans to local development organizations which provide new private capital for business loan funds and meet the requirements set forth in this section. Such state guarantee shall not at any time exceed 80 percent of the maximum principal amount that may be borrowed under the terms of the loan, plus interest and related reasonable collection expenses with

respect to such loan. The full faith and credit of the state shall be pledged for any such guarantee, but the total outstanding amount of principal guaranteed by the state under this section shall not exceed, in the aggregate at any time, \$3,000,000, nor shall the guarantee cause the contingent credit limit of RSA 162-A:22 to be exceeded. The authority shall establish appropriate guidelines to insure that the guarantee is used to capitalize loan funds that serve the most economically distressed areas of the state.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender, and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. The guarantee agreement shall specifically require that the proceeds of a guaranteed loan shall be used by the local development organization only to make loans to businesses within a particular locale or region of the state. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. The amount payable under a guarantee awarded under this program may be based upon the percentage of the maximum principal amount available under the loan, and as may be determined by the authority, need not be reduced in proportion to any reduction in the principal balance of the loan.

IV. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

Source.

2000, 10:1, eff. July 1, 2000.

162-A:8. Guarantee of Loans to Small Businesses.

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and related reasonable collection expenses and costs of any loan made by a private financial institution to any business that is or will be operating in the state, provided either that the loan is also guaranteed in part under a program administered by the United States Small Business Administration or that the loan is made in connection with another loan which is guaranteed in part under a program administered by the United States Small Business Administration. Such state guarantee may be up to 90 percent of the portion of the loan not guaranteed through the United States Small Business Administration, or in the case of a loan made in connection with another loan which is guaranteed in part under a program administered by the United States Small Business Administration, such state guarantee may be made up to 90 percent of the principal of such loan. The authority may execute and deliver any agreement or document required by the United States Small Business Administration to implement the guarantee program authorized in this section. The full faith and credit of the state may be pledged for any such guarantee. In addition, the guarantee shall also include interest and related reasonable collection expenses and costs and shall not cause the contingent credit limit under RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lending financial institution, and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lending financial institution to the extent it honors the

guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. The sum of the guarantees issued to any one borrower by both the authority and the United States Small Business Administration shall not exceed \$1,500,000 of principal. The total principal amount of any loan or loans guaranteed under this section made to one borrower to finance working capital shall not exceed \$1,500,000. In addition, the guarantee shall also include interest and related reasonable collection costs and expenses.

IV. The amount of any guarantee awarded under this section shall be reduced in proportion to any reduction in the principal balance of the loan.

V. The governor and council shall not award any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

Source.

1992, 262:3. 1993, 335:6, 7, eff. June 29, 1993. 1995, 128:3, eff. May 19, 1995. 1997, 329:4, eff. Oct. 1, 1997.

Amendments

—1997. Paragraph II: Substituted “chairperson” for “chairman” in two places in the fourth sentence and made a minor stylistic change in the fifth sentence.

—1995. Paragraph I: Inserted “either” following “provided” and added “or that the loan is made in connection with another loan which is guaranteed in part under a program administered by the United States Small Business Administration” at the end of the first sentence, added “or in the case of a loan made in connection with another loan which is guaranteed in part under a program administered by the United States Small Business Administration, such state guarantee may be made up to 90 percent of the principal of such loan” following “Administration” in the second sentence and deleted “but the total outstanding amount guaranteed by the state under this section shall not exceed in the aggregate at any time \$40,000,000” in the fourth sentence.

—1993. Paragraph I: Deleted “and” preceding “interest on” and inserted “and related reasonable collection expenses and costs of” thereafter in the first sentence, substituted “may” for “shall” following “state guarantee” in the second sentence, added a new third sentence, and rewrote the former third sentence as the new fourth and fifth sentences.

Paragraph III: Rewritten to the extent that a detailed comparison would be impracticable.

Notice of availability of program.

1992, 262:16, eff. May 15, 1992, provided: “Promptly after the effective date of sections 1-16 of this act [May 15, 1992], the authority shall publish in one or more newspapers in the state a notice announcing the programs established by RSA 162-A:8, 162-A:9, 162-A:13, and 162-I:9-b. In addition, the authority shall conduct a sequence of public information hearings in various regions of the state for the purpose of describing such programs and obtaining public input regarding their implementation. Such hearings shall be conducted by a member of the board or the executive director of the authority. No loan or guarantee shall be made under these

programs until 60 days after the first notice announcing the programs has been published and the public information meetings have been completed.”

162-A:9. Temporary Loans to Business.

I. The authority may lend money to businesses for any project. Any such loan shall be on such terms and conditions as prescribed by the authority and shall be evidenced by a promissory note given by the business to the authority. In addition, prior to making any loan, the authority and the business shall enter into a loan agreement specifying the terms and conditions of the loan. Any loan agreement shall specify the terms of repayment of the loan, provide for the payment of an appropriate interest rate, and obligate the business to pay all the costs and expenses of upkeep, maintenance, and operation of the project being financed. A loan agreement may also provide such terms and conditions as the authority shall deem necessary or desirable, including, without limitation, provisions requiring that collateral be pledged to secure the loan, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, controls on the requisition of loan proceeds, appropriate events of default, provisions for payment to the authority of origination fees, late charges and additional interest on overdue payments of principal, interest or other charges, appropriate financial covenants, and provisions for the establishment of reserves for the project or the loan.

II. Any loan made under this section shall meet the following minimum requirements:

(a) The total principal amount of any loan or loans made to one borrower under this section shall not exceed \$2,000,000.

(b) The final maturity date of any loan or loans, including renewals, shall not be later than the later of 3 years from the date the loan is made or one year after the project was placed in service.

III. The authority shall not make any loan or enter into any loan agreement under this section unless after a hearing the governor and council have made the findings specified in RSA 162-A:18.

Source.

1992, 262:3. 1995, 128:4, eff. May 19, 1995.

Amendments

—1995. Paragraph II: Deleted former subpar. (b) and redesignated former subpar. (c) as subpar. (b).

Notice of availability of program.

See note set out under 162-A:8.

162-A:9-a. Energy Conservation Loan Program.

I. The authority shall establish an energy conservation loan program to encourage small businesses and agricultural entities to improve

energy efficiency, particularly through the adoption of conservation and cogeneration initiatives. Pursuant to the terms and conditions for loan guarantees under RSA 162-A:8 and for temporary loans under RSA 162-A:9, the authority shall provide loan guarantees and direct loans to small businesses and agricultural entities for energy efficiency improvements.

II. The authority shall not make any loan or enter into any loan agreement under this section unless, after a hearing, the governor and council have made the findings specified in RSA 162-A:18.

Source.

2006, 159:1, eff. July 21, 2006.

162-A:10. Secondary Market for Loans Made by Local Development Organizations.

I. The authority may acquire for its own account, or for resale, loans made by local development organizations to businesses operating within the state. The authority shall acquire such loans only if the local development organization agrees to use the proceeds of the sale of such loans for the promotion, encouragement, or development of business within the state, or a region or community of the state.

II. Prior to the acquisition of any loans from a local development organization, the authority shall enter into a loan purchase agreement with such organization. Such loan purchase agreement shall specify terms and conditions under which the authority will purchase loans, the purchase price for such loans, and the terms and conditions for use of the purchase price by the local development organization. The loan purchase agreement may also contain such provisions as the authority may deem necessary or desirable, including, without limitation, representations, warranties, and covenants of the local development authority regarding the loans, conditions under which the local development authority may be required to repurchase the loans, provisions for the payment of guarantee fees to the authority in the event the loans are guaranteed under RSA 162-A:10, III, provisions for payment of the authority's costs and expenses, and provisions for the local development authority to continue servicing the loans on behalf of the authority or any subsequent purchaser.

III. In order to facilitate the resale of loans acquired under this section the governor and council, at the request of the authority, may award a state guarantee of up to 90 percent of the principal of, interest on, and reasonable collection expenses related to such loans. The full faith and credit of the state may be pledged for such guarantee. In addition, the total amount guaranteed shall also include interest

and related reasonable collection expenses and costs and shall not cause the contingent credit limit under RSA 162-A:22 to be exceeded. The state's guarantee of loans under this section shall be evidenced by a guarantee agreement between the state and the purchaser of the loans. Such guarantee agreement shall be assignable to any subsequent purchaser or purchasers of the loans and shall contain such provisions as the authority and the governor and council may deem appropriate. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. The amount of any guarantee awarded under this section shall be reduced in proportion to any reduction in the principal balance of the loan.

IV. The authority shall not purchase any loans under RSA 162-A:10, I or enter into a loan purchase agreement under RSA 162-A:10, II unless after a hearing the governor and council have made the findings specified in RSA 162-A:18.

V. The governor and council shall not award any state guarantee under RSA 162-A:10, III unless after a hearing they have made findings specified in RSA 162-A:18.

Source.

1992, 262:3. 1993, 335:8, eff. June 29, 1993. 1995, 128:5, eff. May 19, 1995. 1997, 329:5, eff. Oct. 1, 1997.

Amendments

—1997. Paragraph III: Substituted "chairperson" for "chairman" in two places in the sixth sentence and made a minor stylistic change in the seventh sentence.

—1995. Paragraph III: Inserted "interest on, and reasonable collection expenses related to" following "principal of" in the first sentence and deleted "but the total amount guaranteed by the state under this section shall not exceed in the aggregate at any time \$40,000,000" following "such guarantee" in the third sentence.

—1993. Paragraph III: Rewrote the former first and second sentences as the new first through fourth sentences.

162-A:11. Guarantee Fund Established.

In order to provide additional security to the state for any loan guarantees made under RSA 162-A:8, RSA 162-A:10, or RSA 162-A:13, there is hereby established a loan guarantee reserve fund, which shall be held by the authority apart from all of its other funds, and which shall be deemed irrevocably pledged to secure all loans guaranteed under RSA 162-A:8, RSA 162-A:10, III, or RSA 162-A:13. Whenever a loan guarantee is awarded under RSA 162-A:8, RSA 162-A:10, III, or RSA 162-A:13 the authority, the borrower, the lending financial institution, the

local development organization, the purchaser of the loans, or any appropriate combination of them shall deposit in such fund an amount equal to not less than 10 percent of the guaranteed portion of the principal of the loan or loans. If a state guarantee is called upon to be honored, the authority, upon direction of its treasurer or assistant treasurer, shall draw upon such fund for the purpose of honoring such guarantee, and only when amounts in the fund are exhausted shall the governor be called upon to draw a warrant pursuant to RSA 162-A:8, II, RSA 162-A:10, III, or RSA 162-A:13, II. Interest earned on amounts invested in the fund shall be accumulated therein or paid to the authority upon its direction. If earnings are paid to the authority, they may be used by the authority for any of its purposes. If at any time the amount in the fund exceeds 10 percent of the guaranteed portion of the principal of all loans guaranteed under this section, or such higher amount as may be determined by the authority, the authority may withdraw the excess. Any loan guaranteed under this chapter shall be a permitted investment in this fund. The authority may enter into such trust agreements, depository agreements, or other arrangements with one or more state banks in order to carry out the purposes of this section.

Source.

1992, 262:3, eff. May 15, 1992. 1997, 329:6, eff. Oct. 1, 1997.

Amendments

—1997. Substituted “draw a warrant” for “draw his warrant” in the third sentence.

162-A:12. Capital Access Program.

I. The authority may contribute money to funds, to be known as “CAP funds,” that shall be held for the benefit of participating state banks and state credit unions. Each such fund shall be held by the authority separate and apart from all other funds of the authority and shall be held exclusively to secure principal of and interest on CAP loans made by a participating state bank or state credit union.

II. The amount of the authority’s contribution to a CAP fund shall not exceed 10 percent of the principal amount of the CAP loans to be secured by the CAP fund. As a condition of the authority making a contribution to a CAP fund, the authority may require the borrower or the participating state bank or state credit union to make a contribution to the CAP fund and may impose such other conditions or requirements as the authority may deem necessary or desirable. All moneys contributed to a CAP fund shall be held in the name of the authority. Investment earnings on the CAP fund shall be credited to the fund, and such earnings shall be periodically paid to the authority unless the CAP participation agreement otherwise provides.

III. Prior to establishing a CAP fund at a participating state bank or state credit union, the authority shall enter into a CAP participation agreement with the participating state bank or state credit union. The CAP participation agreement shall specify:

(a) The maximum amount of the authority’s contributions to the CAP fund.

(b) The conditions under which the authority will make contributions to the CAP fund.

(c) The conditions under which the participating state bank or state credit union may demand payment from a CAP fund to pay a defaulted CAP loan.

(d) Minimum due diligence procedures for servicing CAP loans.

(e) Conditions under which the participating state bank, or state credit union, or other borrower will be required to contribute to the CAP fund.

(f) Provision for the payment of authority fees, costs, and expenses from earnings on the CAP fund or otherwise.

(g) Provisions for the termination of the CAP fund, in whole or in part, and disbursement of any excesses in the CAP fund.

(h) Criteria and procedures for qualifying a loan as a CAP loan.

(i) Requirements that the participating state bank or state credit union report to the authority not less often than annually regarding outstanding balances on CAP loans, delinquent CAP loans and such other information as the authority may deem appropriate.

(j) Permitted investments in the CAP fund.

(k) Other terms and conditions as the authority may deem necessary or desirable.

IV. (a) At a minimum, CAP loans shall meet the following requirements:

(1) The borrower is either a start-up business or did not have annual sales in its most recently completed fiscal year of greater than \$5,000,000.

(2) The total outstanding principal amount of CAP loans to the borrower does not exceed \$500,000.

(3) The proceeds of the CAP loan shall be used for business purposes.

(b) The authority may from time to time impose requirements on CAP loans in addition to those contained in subparagraph (a) or in a CAP participation agreement by written notice to participating state banks and state credit unions, but such additional requirements shall not apply to CAP loans already made, or to CAP loans for which written commitments exist, provided CAP loans from these written commitments are made within 3 months of the date of the written notice. Such notices shall not constitute rules within the meaning of RSA 541-A.

V. The authority shall not initially fund any CAP fund or enter into a CAP participation agreement or any material amendment to a CAP participation agreement, unless after a

hearing the governor and council have made the findings specified in RSA 162-A:18.

Source.

1992, 262:3, eff. May 15, 1992. 1996, 189:8, eff. Aug. 2, 1996.

Amendments

—1996. Substituted “and state credit unions” for “or state credit union” following “state banks” wherever it appeared throughout the section and “other borrower” for “a borrower” in subpar. III(e).

162-A:13. Capital Asset Backed Guarantee Program.

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans which meet the requirements set forth in this section. Such state guarantee shall not at any time exceed 90 percent of the principal, interest and related reasonable collection expenses with respect to such loan. The full faith and credit of the state shall be pledged for any such guarantee; provided that the guarantee shall not cause the contingent credit limit of RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. Any loan guaranteed under this section shall meet the following minimum requirements.

(a) The authority shall have received an appraisal of an independent party which shall state that the appraised fair market value equals or exceeds 125 percent of the total debt secured by the property.

(b) The authority shall have received a certification from the lender and the borrower which shall state that no more than 40 percent of the total principal amount of the loan shall be used to finance working capital.

(c) The final maturity date of the loan shall not be later than the later of 10 years from the date the loan was made or 10 years from the date the project was placed in service, provided that each loan may be renewed or refinanced for up to 2 additional 10-year periods.

(d) After the project has been placed in service, the principal balance of the loan shall be scheduled to be reduced annually by an amount equal to not less than the principal amount that would be paid under a 20-year amortization schedule requiring fixed annual payments, to be applied to accrued interest first with any excess to principal, and a fixed interest rate not less than the interest rate in effect on the date the loan becomes effective, provided that in connection with any renewal of a loan such principal reduction shall not be required.

(e) Nine months before the maturity date of any loan the borrower shall be required to give written notice to the authority of whether or not it intends to seek a renewal of the loan.

IV. The amount of any guarantee awarded under this section shall be reduced in proportion to any reduction in the principal balance of the loan.

V. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

Source.

1992, 262:3. 1993, 335:9-11, eff. June 29, 1993. 1995, 128:6, 7, eff. May 19, 1995. 1997, 329:7, eff. Oct. 1, 1997. 2001, 1:1, eff. Feb. 9, 2001. 2006, 157:2, eff. May 22, 2006.

Amendments

—2006. Paragraph III(c): Rewritten to the extent that a detailed comparison would be impracticable.

—2001. Paragraph III(c): Inserted the proviso and “further” preceding “that each loan may”.

—1997. Paragraph II: Substituted “chairperson” for “chairman” in two places in the fourth sentence and made a minor stylistic change in the fifth sentence.

—1995. Paragraph I: Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph III(d): Substituted “the principal amount that would be paid under a 20-year amortization schedule requiring fixed annual payments, to be applied to accrued interest first with any excess to principal, and a fixed interest rate not less than the interest rate in effect on the date the loan becomes effective” for “5 percent of the original principal amount of the loan” preceding “provided”.

—1993. Paragraph I: Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph III: Rewrote subpars. (a) and (b) and substituted “5” for “6” preceding “percent” in subpar. (d).

Notice of availability of program.

See note set out under 162-A:8.

162-A:13-a. Working Capital Loan Guarantee Program.

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans which meet the requirements set forth in this section. Such state guarantee shall not at any time exceed 75 percent of the maximum principal amount that may be borrowed under the terms of the loan, plus interest and related reasonable collection expenses with respect to such loan. For purposes of this section, the term "loan" shall include, but not be limited to, revolving credit arrangements that provide for advances and repayment of principal based on the quality and amount of certain assets of a borrower, including rights to receive payments under contracts to provide services or products. The full faith and credit of the state shall be pledged for any such guarantee; provided that the guarantee shall not cause the contingent credit limit of RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender, and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. Any loan guaranteed under this section shall meet the following requirements:

(a) The agreement establishing the loan shall provide for adequate monitoring of collateral by the lender in accord with reasonable commercial practices; provided, however, that for loans the maximum principal amount of which may not exceed \$500,000, the authority may provide alternative monitoring measures that reduce the costs of monitoring the loan.

(b) If the principal amount that may be borrowed under the loan may vary based on the quality and amount of specific assets of the borrower, then the repayment of the loan shall be secured by a first priority security interest in such specific assets.

(c) If the principal amount that may be borrowed under the loan may vary based on the quality and amount of specific assets of the borrower, then the agreement establishing the loan shall provide that the maximum amount of principal that may be advanced shall not exceed:

(1) Ninety percent of the borrower's accounts and accounts receivable which arise in the ordinary course of the borrower's business and which are not more than 90 days old from the due date of the invoice; and

(2) Sixty percent of the borrower's inventory valued at lower of cost or market value.

(d) The maximum principal amount available under the loan to any borrower shall not exceed \$2,000,000.

IV. The amount payable under a guarantee awarded under this program may be based upon the percentage of the maximum principal amount available under a loan, and as may be determined by the authority, need not be reduced in proportion to any reduction in the principal balance of the loan.

V. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

Source.

1995, 128:8, eff. May 19, 1995. 1997, 329:8, eff. Oct. 1, 1997.

Amendments

—1997. Paragraph II: Substituted "chairperson" for "chairman" in two places in the fourth sentence.

162-A:13-b. Business Loan Enhancement Program.

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans which meet the requirements set forth in this section. The maximum amount for which the state may be liable pursuant to a guarantee awarded in accordance with this section shall not at any time exceed the lesser of \$250,000 or 22.23 percent of the maximum

principal amount that may be borrowed under the terms of the loan, plus in either case interest and related reasonable collection expenses with respect to such loan. The full faith and credit of the state shall be pledged for any such guarantee; provided that the guarantee shall not cause the contingent credit limit of RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender, and the borrower. The guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. Subject to this section and the terms and conditions of such guarantee agreement, the guarantee agreement may provide that the state shall be liable to pay the first dollar of loss realized by the bank with respect to the guaranteed loan. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. Any loan guaranteed under this section shall meet the following requirements:

(a) The total principal amount of the loan shall not exceed 90 percent of the appraised fair market value of the collateral securing repayment of the loan, as determined pursuant to an appraisal of the collateral prepared by an independent party in connection with such loan and provided to the authority prior to awarding a guarantee.

(b) The final maturity date of the loan shall not be later than the later of 10 years from the date the loan was made or 10 years from the date the project was placed in service.

(c) After the project has been placed in service, the principal balance of the loan shall be scheduled to be reduced annually by an amount equal to not less than the principal

amount that would be paid under a 20-year amortization schedule requiring fixed annual payments, to be applied to accrued interest first with any excess to principal, and a fixed interest rate not less than the interest rate in effect on the date the loan becomes effective, provided that in connection with any renewal of a loan such principal reduction shall not be required.

IV. The maximum amount for which the state may be liable pursuant to a guarantee awarded in accordance with this section shall be reduced by one dollar for every dollar of principal that is paid with respect to the loan that is subject to the guarantee.

V. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

Source.

2006, 157:1, eff. May 22, 2006.

162-A:13-c. Intellectual Property Business Loan Development Program.

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans which meet the requirements set forth in this section. The maximum amount for which the state may be liable pursuant to a guarantee awarded in accordance with this section shall not at any time exceed the lesser of \$250,000 or 75 percent of the maximum principal amount that may be borrowed under the terms of the loan, plus in either case interest and related reasonable collection expenses with respect to such loan. The full faith and credit of the state shall be pledged for any such guarantee; provided that the guarantee shall not cause the contingent credit limit of RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender, and the borrower. The guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the estab-

ishment of reserves. Subject to this section and the terms and conditions of such guarantee agreement, the guarantee agreement may provide that the state shall be liable to pay the first dollar of loss realized by the bank with respect to the guaranteed loan. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. Any loan guaranteed under this section shall meet the following requirements:

(a) The loan shall be secured by a first priority security interest in "intellectual property assets," including:

(1) Patents, patent applications, patent disclosures and all related continuation, divisional, reissue, patent applications and registrations.

(2) Trademarks, service marks, trade drafts, trade names, corporate names, and logos.

(3) Copyrights and registrations and applications for registration of copyrights.

(4) Computer software, data and documentation.

(5) Trade secrets and confidential business information, know-how, manufacturing and product processes and techniques, research and development information, business and marketing plans and customer and supplier lists and information.

(6) Other proprietary rights relating to any of the foregoing.

(7) Copies and tangible embodiments of the foregoing.

(b) The total principal amount of the loan shall not exceed 75 percent of the appraised fair market value of the intellectual property assets securing repayment of the loan, as determined pursuant to an appraisal of the collateral prepared by a competent independent party approved by the authority in connection with such loan and provided to the authority prior to awarding a guarantee.

(c) The final maturity date of the loan shall not be later than 10 years from the date the loan was made.

(d) After the project has been placed in service, the principal balance of the loan shall be scheduled to be reduced annually by an amount equal to not less than the principal amount that would be paid under a 20-year amortization schedule requiring fixed annual payments, to be applied to accrued interest first

with any excess to principal, and a fixed interest rate not less than the interest rate in effect on the date the loan becomes effective, provided that in connection with any renewal of a loan such principal reduction shall not be required.

IV. The maximum amount for which the state may be liable pursuant to a guarantee awarded in accordance with this section shall be reduced by one dollar for every dollar of principal that is paid with respect to the loan that is subject to the guarantee.

V. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

VI. The total amount of guarantees awarded under this section shall not exceed in the aggregate at any time \$1,000,000 plus interest.

VII. Whenever a guarantee is awarded under this section, the authority, the borrower, the lending institution or any appropriate combination of them shall deposit in the guarantee fund established under RSA 162-A:11 an amount equal to not less than 50 percent of the guaranteed portion of the principal of the loan.

Source.

2007, 317:1, eff. July 13, 2007.

162-A:14. Agreements Commercially Reasonable.

Any agreements entered into by the state or the authority under this chapter shall be deemed to be on commercially reasonable terms.

Source.

1992, 262:3, eff. May 15, 1992.

162-A:15. Issuance of Bonds.

I. The authority may issue bonds pursuant to this section which shall be obligations of the authority and not general obligations of the state, except as provided in RSA 162-A:17. Such bonds may be issued from time to time consistent with the purposes and provisions of this chapter to make expenditures in aid of local development organizations under RSA 162-A:7, to make temporary loans to businesses under RSA 162-A:9, to acquire loans under RSA 162-A:10, to fund the guarantee fund established under RSA 162-A:11, to make contributions to CAP funds under RSA 162-A:12, to pay or refund any bonds issued pursuant to this section or interest thereon, or to pay the costs and expenses of the authority. The principal of, and premium, if any, and interest on all bonds shall be payable solely by the authority in accordance with the provisions of this chapter. The bonds shall be issued by the authority in such amounts as the board shall determine, not exceeding in the aggregate at any time \$25,000,000. Bonds of each issue shall be dated,

shall bear interest at such rate or rates, including rates variable from time to time as determined by such index, banker's loan rate or other method as may be determined by the authority, and shall mature at such time or times as may be determined by the authority, except that no bonds shall mature more than 30 years from their date of issue. Bonds may be made redeemable before maturity either at the option of the authority or at the option of the holder, or upon the occurrence of specified events, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and details of the bond. The bonds may be sold in such manner, either at public or private sale, for such price, at such rate or rates of interest, or at such discount in lieu of interest as the authority may determine.

II. Every bond shall be signed on behalf of the authority by 2 persons designated by the authority. One person shall be a member of the board who is also the chairperson of the board, or the vice chairperson of the board, or the treasurer of the authority, or an assistant treasurer of the authority. The other person shall be any member of the board or the executive director of the authority. The signatures may be manual or facsimile but at least one signature on every bond shall be manual, unless the bond bears a manual authentication or certification by a bank, trust company or other financial institution, in which case both signatures on behalf of the authority may be facsimile. Interest coupons, if any, shall bear the facsimile signature of one of the persons signing the bond on behalf of the authority. Bonds shall also bear the seal of the authority or a facsimile of the seal. Bonds executed as provided in this paragraph shall be valid notwithstanding that any or all of the persons whose signatures appear on the bond shall have ceased to hold office before delivery of and payment for the bond.

III. Any bonds issued under this chapter may be issued pursuant to and entitled to the benefits of a security document between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state, or by a security document directly between the authority and the purchasers of the bonds. Such security document shall be in such form and executed in such manner as may be determined by the board. Such security document may include the mortgage, pledge, or grant of a security interest in any property of the authority and may pledge or assign, in whole or in part, the revenues held or to be received by the authority, any contract or other rights to receive the revenues, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the authority, and any proceeds thereof. Such security documents may contain provisions for protecting and enforcing

the rights, security, and remedies of the bondholders as may, in the discretion of the board, be reasonable and proper and not in violation of law. Such security documents may include provisions defining defaults and providing for remedies in the event of defaults, which may include the acceleration of maturities and the enforcement of any mortgage, pledge or security interest, and covenants setting forth the duties of, and limitations on, the authority in relation to the custody, safeguarding, investment, and application of moneys, the issue of additional or refunding bonds, the fixing, revision and collection of fees and other revenues, the use of bond proceeds, the establishment of reserves, the acquisition of any property or interest therein or undertaking of any project, any contracts relating thereto and subsequent amendments of such provisions and contracts. It shall be lawful for any bank or trust company to act as a depository or trustee of the proceeds of bonds, revenues, or other moneys under a security document and to furnish such indemnification or to pledge such securities and issue such letters or lines of credit or credit facilities as may be required by the authority acting under the paragraph. Any such security document may set forth the rights and remedies of bondholders and of the trustee and may restrict the individual right of action by bondholders.

IV. Any bonds issued under authority of this chapter may be issued pursuant to lines of credit or other banking arrangements under such terms and conditions not inconsistent with this chapter, and under such agreements with the purchasers or makers thereof, as the board may determine to be in the best interests of the authority. In addition to other security provided herein or otherwise by law, bonds issued by the authority under this section may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit facilities issued to the authority by any bank, trust company or other financial institution, within or without the state, and the authority may make any pledge, mortgage, assignment or security interest in respect of its property and revenues as security for the reimbursement by the authority to the issuers of such letters or lines of credit, insurance or credit facilities, or any payments made thereunder.

V. Any mortgage, pledge or security interest made by the authority under this chapter shall be valid and binding and shall be deemed continuously perfected for the purposes of RSA 382-A and all other laws from the time when the mortgage, pledge, or security interest is made. The property or revenues so mortgaged, pledged, or subjected to a security interest then held or thereafter acquired or received by the authority shall immediately be subject to the lien of such mortgage, pledge, or security interest without any physical delivery or segregation thereof or further act. The lien of such mort-

gage, pledge, or security interest shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. No such property or revenues may be used in a manner inconsistent with the terms governing such mortgage, pledge, or security interest. Any agreement by which a pledge or security interest in personal property is created under this chapter shall be filed or recorded in the records of the secretary of state. Any mortgage or other agreement by which a security interest in real property is created under this chapter shall be filed with the register of deeds for the county in which such property is located.

VI. Any owner of a bond issued under the provisions of this section and any trustee under a security document securing the same, except to the extent the rights given in this paragraph may be restricted by such security document, may bring suit upon the bonds and may, either at law or in equity, by suit, action, mandamus, or other proceeding for legal or equitable relief, protect and enforce any and all rights under the laws of the state granted hereunder or under such security document, and may enforce and compel performance of all duties required by this chapter or by such security document to be performed by the authority or by any director or officer of the authority.

VII. The authority may issue refunding bonds for the purpose of paying any bonds issued under the provisions of this section at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such times prior to the maturity or redemption of the bonds being refunded as the board may determine. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other expenses from the proceeds of such refunding bonds as may be required by a security document securing the bonds. The authorization and issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and, obligations of the authority in respect to the same shall be governed by the provisions of this chapter relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

VIII. Any debt service fund or debt service reserve fund established in connection with the issuance of bonds under this chapter shall be kept separate from other moneys of the authority. All proceeds of any bonds issued under this chapter, together with the income derived therefrom, shall be expended without fur-

ther authorization or appropriation as provided for in the security document with respect to such bonds.

IX. Moneys in any fund or account created under the provisions of this section, subject to the terms and provisions of any security document applicable thereto, may be invested. Except as otherwise provided by any such security document, obligations so purchased as an investment of money in said fund or account shall be deemed at all times to be part of said fund or account, and the interest thereon and any profit arising from the sale thereof shall be credited to said fund or account, and any loss resulting on their sale shall be charged to said fund or account, respectively.

X. The state does hereby pledge to and agree with the holders of bonds issued under this chapter that the state shall not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders of such bonds or in any way impair the rights and remedies of such holders until such bonds, together with the interest on them, with the interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds.

XI. Bonds issued under this section and their transfer and income, including any profit made on their sale or transfer, shall at all times be exempt from all taxation by or within the state.

XII. Notwithstanding any of the provisions of this chapter or any recitals in any bonds issued under this section, all such bonds shall be deemed to be investment securities under RSA 382-A.

Source.

1992, 262:3, eff. May 15, 1992. 1997, 329:9, eff. Oct. 1, 1997.

Amendments

—1997. Paragraph II: Substituted “chairperson” for “chairman” in two places in the second sentence.

Cross References.

Notification of office of investment and debt management of proposed bond issues, see RSA 6-B:3,

162-A:16. Eligible Investments.

Bonds issued under the provisions of this chapter are hereby made securities in which all public officers, agencies and authorities of the state and of its political subdivisions, insurance companies, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency, authority or political subdivision of the

state for any purpose for which the deposit of bonds or obligations of the state or any political subdivision is now or may hereafter be authorized by law.

Source.

1992, 262:3, eff. May 15, 1992.

162-A:17. State Bond Guarantee.

I. In view of the general public benefits expected to be derived from the authority's activities under this chapter, and their contribution to the social welfare and economic prosperity of the state and its political subdivisions, the governor and council may award an unconditional state guarantee of the principal and interest thereon of bonds issued under this chapter. The full faith and credit of the state shall be pledged for any such guarantees of principal and interest, but the total outstanding amount of bonds guaranteed by the state under this section shall not exceed in the aggregate at any time \$25,000,000 plus interest. In addition, the state shall not award a guarantee under this section if it would cause the contingent credit limit under RSA 162-A:22 to be exceeded. The governor, with the advice and consent of the council, is authorized to draw a warrant for such a sum out of any money in the treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. The state's guarantee shall be evidenced on each guaranteed bond by an endorsement signed by the state treasurer in substantially the following form:

The state of New Hampshire hereby unconditionally guarantees the payment of the whole of the principal and interest thereon of the within bond, and for the performance of such guarantee the full faith and credit of the state are pledged.

State Treasurer

II. No state guarantee shall be awarded under this section unless the guaranteed bonds are secured by, among other things, any and all fees to be received by the authority in connection with bonds issued under RSA 162-I in an original principal amount equal to or greater than \$1,500,000. In connection with the award of a state guarantee, the governor and council may impose such other terms and conditions as they may deem appropriate concerning the bonds, the use of any property or revenues of the authority, and reimbursement to the state if any state funds are used to honor the guarantee. Such terms and conditions may be contained in an agreement between the state and the authority, to be executed on behalf of the state by the governor and the state treasurer and on behalf of the authority by its chairperson, vice chairperson, or executive director.

III. Before awarding any state guarantee of bonds under this section the governor and council, after a hearing, shall have made the following findings:

(a) The award of the state guarantee will contribute significantly to the success of the bond issue and the authority's programs under this chapter.

(b) Reasonable and appropriate measures have been taken to minimize the risk of loss to the state and to ensure that any private benefit from the award of the guarantee shall be only incidental to the public purpose served thereby.

IV. The signature of the state treasurer on an endorsement of a state guarantee may be manual or facsimile.

Source.

1992, 262:3, eff. May 15, 1992. 1997, 329:10, eff. Oct. 1, 1997.

Amendments

—1997. Paragraph I: Substituted "a" for "his" preceding "warrant" in the fourth sentence.

Paragraph II: Substituted "chairperson" for "chairman" in two places in the third sentence.

162-A:18. Programs for Public Purpose; Required Findings.

I. The authority shall not take any action described in RSA 162-A:7, IV, 162-A:9, III, 162-A:10, IV, or 162-A:12, V, and the governor and council shall not award any guarantee under RSA 162-A:7-a, RSA 162-A:8, RSA 162-A:10, III, RSA 162-A:13, or RSA 162-A:13-a unless the governor and council have made the following findings:

(a) The proposed action will serve a public use and provide a public benefit.

(b) The proposed action is within the policy of, and the authority conferred by, this chapter.

(c) The proposed action will preserve or increase the social welfare or economic prosperity of the state and one or more of its political subdivisions, and will promote the general welfare of the state's citizens.

(d) The proposed action will promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment.

(e) The applicable special findings in paragraph II of this section.

II. Before approving any action referred to in paragraph I, the governor and council shall also make the applicable special findings:

(a) If the action is the expenditure of money pursuant to RSA 162-A:7, the governor and council shall find that the expenditure is consistent with local or regional development plans and policies.

(b) If the action is the award or renewal of a state guarantee pursuant to RSA 162-A:7-a, RSA 162-A:8, RSA 162-A:13, or RSA 162-A:13-a, the governor and council shall find that:

(1) The award or renewal of the guarantee will contribute significantly to the success of the financing; and

(2) Reasonable and appropriate measures have been taken to minimize the risk of loss to the state and to ensure that any private benefit from the award of the guarantee will be only incidental to the public purpose served thereby.

(c) If the action is making of a temporary loan pursuant to RSA 162-A:9, the governor and council shall find that:

(1) The loan will be a significant factor in the continued operation, competitiveness, or expansion of the business receiving it;

(2) The business is of social or economic importance to the region or community in which it is located; and

(3) The risk of loss to the authority as a result of making the loan is reasonable under the circumstances.

(d) If the action is the acquisition of loans from local development organizations pursuant to RSA 162-A:10, the governor and council shall find that:

(1) Such acquisition will make available funds for the local or regional promotion, encouragement, or development of business activities in an area where such funds are needed; and

(2) The loans being acquired do not impose an undue risk of loss to the authority.

(e) If the action is the award of a state guarantee pursuant to RSA 162-A:10, III, the governor and council shall find that:

(1) The award of the guarantee is necessary to sell the loans at a reasonable price;

(2) The proposed use of the proceeds of sale by the authority will promote business activities within the state consistent with the purposes of this chapter; and

(3) Reasonable and appropriate measures have been taken to minimize the risk of loss to the state and to ensure that any private benefit from the award of the guarantee shall be only incidental to the public purpose served thereby.

(f) If the action is the establishment of a CAP fund or the execution or amendment of a CAP participation agreement pursuant to RSA 162-A:12, the governor and council shall find that:

(1) The proposed participating state bank or state credit union is qualified to participate under the provision of this chapter;

(2) Appropriate measures have been taken to ensure that the participating state bank or state credit union makes only CAP loans meeting the requirements of RSA 162-A:12, IV;

(3) The proposed CAP participation agreement complies with RSA 162-A:12, III; and

(4) Reasonable precautions have been taken to minimize the risk of loss to the CAP fund.

Source.

1992, 262:3, eff. May 15, 1992. 1996, 189:9, eff. Aug. 2, 1996. 2000, 10:2, 3, eff. July 1, 2000.

Amendments

—2000. Paragraph I: Inserted “RSA 162-A:7-a” following “guarantee under”, “RSA” preceding “162-A:10, III” and deleted “or” thereafter and inserted “or RSA 162-A:13-a” preceding “unless the governor” in the introductory paragraph.

Paragraph II(b): Inserted “RSA 162-A:7-a” following “pursuant to”, deleted “or” preceding “RSA 162-A:13” and inserted “or RSA 162-A:13-a” thereafter in the introductory paragraph.

—1996. Paragraphs II(f): Inserted “or state credit union” following “state bank” in subpars. (1) and (2).

NOTES TO DECISIONS

Public use and benefit

A guarantee to finance the redevelopment of an industrial building is within the powers granted to the industrial park authority, provided that the governor and council determine that it will be of public use and benefit. 1 N.H.Op.A.G. 160. (Decided under prior law.)

162-A:19. Hearings.

I. Promptly after the beginning of each calendar year the authority shall conduct a public hearing regarding the use of any available contingent credit limit under RSA 162-A:22 and regarding the allocation of such available contingent credit limit among uses authorized by this chapter. Such hearing may be held before a hearing officer appointed by the authority who shall make a report of the hearing to the board before any final action is taken by the authority that uses a portion of the contingent credit limit.

II. Promptly after the beginning of each calendar year, before the authority makes its first assignment of state ceiling under RSA 162-M, the authority shall conduct a public hearing regarding the use of state ceiling by the authority for that year. Such hearing may be held before a hearing officer appointed by the authority who shall make a report of the hearing to the board before the authority assigns any state ceiling under RSA 162-M:2, III.

III. Any hearing required to be held by the governor and council under this chapter may be held by a single councilor as their designee, who shall make a report of the hearing to the governor and council prior to the making of any findings.

IV. Any hearings held under this chapter shall be for the information of the governor and council or the authority and shall not be treated as determining the rights, duties, or privileges of any entity or person. Neither the authority nor the governor and council shall be required to conduct adjudicative proceedings under RSA 541-A:31–36 in connection with any action taken under this chapter.

V. The authority shall hold the first hearings under RSA 162-A:19, I and II at the beginning of calendar year 1993.

Source.

1992, 262:3. 1994, 412:19, eff. Aug. 9, 1994. 1995, 128:17, eff. May 19, 1995.

Amendments

—1995. Paragraph I: Added “and regarding the allocation of such available contingent credit limit among uses authorized by this chapter” following “RSA 162-A:11” in the first sentence.

—1994. Paragraph IV: Substituted “RSA 541-A:31-36” for “RSA 541-A:16-21” following “proceedings under” in the second sentence.

NOTES TO DECISIONS

Cited:

Cited in *Cushing v. Gregg*, 137 N.H. 429, 629 A.2d 779, 1993 N.H. LEXIS 96 (1993).

162-A:20. Meetings.

The authority shall hold its meetings in a building that is accessible to persons with disabilities. Six voting members of the board shall constitute a quorum, and the affirmative vote of a majority of members in attendance at a meeting shall be necessary for any action taken by the board. No vacancy in the membership of the board shall impair the power of a quorum to exercise all rights and perform all duties of the authority. Notwithstanding RSA 91-A or any other law to the contrary, members of the board shall be permitted to participate in meetings by telephone, provided that any board member so participating shall be able to be heard by and to hear every other member of the board participating in the meeting, and, unless the board is meeting in a nonpublic session as permitted by RSA 91-A:3, shall be able to be heard by all members of the public attending the meeting. Voting members of the board participating by telephone shall be treated as present at the meeting for all purposes, including the establishment of a quorum. Any meeting at which one or more board members are participating by telephone shall be recorded verbatim by magnetic tape or otherwise, and such recording shall be made available for public inspection to the same extent as minutes of the meeting, provided that the accidental destruction of a recording or the accidental failure to record any meeting shall not invalidate any action taken at that meeting.

Source.

1992, 262:3, eff. May 15, 1992. 1997, 329:11, eff. Oct. 1, 1997.

Amendments

—1997. Substituted “six” for “five” preceding “voting members” and “a majority of members in attendance at a meeting” for “5 members” following “affirmative vote of” in the second sentence.

162-A:21. Revenues and Expenses of Authority.

The revenues received by and due to the authority from any and all sources under this chapter and RSA 162-I shall be retained by the authority and shall be used in such manner as may be determined by the authority consistent with the provisions of this chapter. The authority may expend said funds in connection with transactions and projects consummated or reasonably expected to be consummated under the provisions of this chapter and RSA 162-I as it shall determine in its sole discretion. It is the intent of the legislature that the authority be self-funding and that payment of its operating expenses shall not require state appropriation.

Source.

1992, 262:3. 1993, 335:12, eff. June 29, 1993.

Amendments

—1993. Inserted “and Expenses” following “Revenues” in the section catchline and added the second sentence.

162-A:21-a. Administration of Additional Funds Received by the Authority.

The authority may receive funds from any source in accordance with a public or private program, provided that such program shall have as a principal function the promotion, encouragement, or development of economic activity. The authority shall administer, loan, advance, or otherwise utilize such funds in such manner as may be determined by the authority in its sole discretion consistent with the provisions of this chapter.

Source.

1995, 128:9, eff. May 19, 1995.

162-A:22. Unified Contingent Credit Limit.

The total amount of state guarantees in force under RSA 162-A:7-a, RSA 162-A:8, RSA 162-A:10, III, RSA 162-A:13, RSA 162-A:13-a, RSA 162-A:17, and RSA 162-I:9-b shall not exceed in the aggregate at any time \$50,000,000 plus interest, provided that such amount shall be increased to \$80,000,000 plus interest on January 1, 1993, and to \$95,000,000 plus interest on January 1, 1994.

Source.

1992, 262:3. 1993, 335:14, eff. June 29, 1993. 2000, 10:4, eff. July 1, 2000.

Amendments

—2000. Inserted “RSA 162-A:7-a” following “force under” and “RSA 162-A:13-a” preceding “RSA 162-A:17”.

—1993. Substituted “\$80,000,000” for “\$65,000,000” following “increased to”, deleted “to \$80,000,000 plus interest on January 1, 1994” preceding “\$95,000,000 plus interest on January 1”, and substituted “1994” for “1995” thereafter.

162-A:23. Reports.

The accounts of the authority shall be subject

to an annual audit performed by an independent certified public accountant selected by the authority. The authority shall submit annually to the speaker of the house of representatives, the president of the senate, the senate clerk, the house clerk, the state library, the committee on commerce, small business, consumer affairs and economic development of the house of representatives, the committee on economic development of the senate, and the governor and council a report on its operations and its audited financial statements for the preceding fiscal year.

Source.

1992, 262:3. 1995, 9:19, eff. June 11, 1995.

Amendments

—1995. Substituted “the senate clerk, the house clerk, the state library, the committee on commerce, small business, consumer affairs and” for “the committees on” following “president of the senate” and “the committee on economic development of the senate” for “and the” preceding “and the governor” in the second sentence.

162-A:23-a. Reports on Economic Development Programs.

I. The authority shall include, as part of its annual report or as a separate report published and made available to the public annually on or before September 1, beginning September 1, 1997, the following information regarding each economic development program funded, bonded, or guaranteed by the authority:

(a) Information regarding the number of jobs to be created or saved and the related wages and benefits levels.

(b) The growth potential of the program.

(c) The environmental impact of the program.

(d) The amount of the loan, grant, loan guarantee, bond guarantee, or tax incentives awarded.

II. The annual report shall also include information regarding the criteria for the awarding of economic development assistance and the means by which the authority tracks the progress which each awardee makes in meeting the job, wage, and benefit projections included in its application for assistance.

Source.

1996, 189:4, eff. Aug. 2, 1996.

162-A:24. Tax Exemption and Payment for Services in Lieu of Taxes.

Any property while owned by the authority is declared to be public property and shall be exempt from all taxes and special assessments of the state or any political subdivision of the state. In lieu of such taxes and special assessments, the state or the political subdivision shall require any business that is a tenant, occupant or user of the property to make payments annually to the municipality in which the

property is located, for its just share of the public expense, including, but not limited to, education, highway maintenance, fire and police protection and other similar public expenses and governmental services. The board of tax and land appeals shall determine, after a hearing, that the payments constitute a just share of the public expense.

Source.

1992, 262:3, eff. May 15, 1992.

NOTES TO DECISIONS

Cited:

Cited in Appeal of City of Portsmouth, 151 N.H. 170, 855 A.2d 483, 2004 N.H. LEXIS 111 (2004).

162-A:25. Construction and Effect of Other Laws.

I. The powers conferred by this chapter are supplemental and alternative to other powers conferred by law, and this chapter is intended as an independent and comprehensive conferral of powers to accomplish the purposes set forth in RSA 162-A:1.

II. No notice, hearing, proceedings or approval shall be required with respect to any action taken under this chapter except as provided in this chapter.

III. Purchases and contracts required in connection with a project may be made or let without regard to any provision of law relating to public purchases or contracts.

IV. The provisions of this chapter shall be liberally construed in order to effect its purposes.

V. If any provision of this chapter shall be held invalid in any circumstance, such invalidity shall not affect any other provisions or circumstances.

VI. This chapter shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this chapter, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

VII. [Repealed.]

VIII. Neither the members of the board nor any officer or employee of the authority shall be personally liable in ordinary negligence by reason of the issuance of bonds under this chapter or RSA 162-I. The state shall indemnify a board member or officer or employee of the authority for expenses related to defense against an ordinary negligence action. Neither the state nor the authority nor any officer or employee of either of them shall be subject to any liability for actions taken to protect the interests of the state, the authority, or any owner of the authority's bonds, provided that such actions are not reckless or wanton.

Source.

1992, 262:3, eff. May 15, 1992. 1997, 329:18, eff. Oct. 1, 1997.

Amendments

—1997. Paragraph VII: Repealed.

NOTES TO DECISIONS**Cited:**

Cited in *Cushing v. Gregg*, 137 N.H. 429, 629 A.2d 779, 1993 N.H. LEXIS 96 (1993).

162-A:26. Conflicts of Interest.

Any person or entity acting as an independent contractor for the authority shall avoid any conflict of interest. No person or entity employed or retained by the authority as an independent contractor shall, while so employed or retained, represent any interest before the authority other than those of the authority and the state. Any independent contractor who acts in a manner contrary to this section shall be dismissed by the authority unless such independent contractor takes prompt steps to eliminate any conflict of interest after receipt of notice from the authority that such a conflict exists. Nothing in this section shall prevent the authority from requiring any borrower to pay or reimburse the authority for the fees and expenses of any independent contractor in connection with the borrower obtaining assistance from the authority. Notwithstanding anything in this section to the contrary, an independent contractor may, with the written consent of the authority, represent a party other than the authority in connection with the issuance of bonds under RSA 162-I, provided the principal amount of the bond issue is not greater than \$20,000,000.

Source.

1992, 262:3, eff. May 15, 1992.

NOTES TO DECISIONS**Cited:**

Cited in *Cushing v. Gregg*, 137 N.H. 429, 629 A.2d 779, 1993 N.H. LEXIS 96 (1993).

162-A:27. False Statements Made to Business Finance Authority.

The authority may order, after hearing upon its own motion or upon complaint, that a person or entity shall be prohibited from applying to the authority for any guarantee, loan, or other credit enhancement under this chapter if the authority determines that such person or entity knowingly made a false statement, or knowingly misrepresented or failed to state a material fact necessary in order to make a statement not misleading in light of the circumstances under which the statement was made, in any document or other presentation submitted to the authority.

Source.

1995, 128:10, eff. May 19, 1995.

162-A:28. Exemption From Administrative Procedure Act and Rulemaking Authority.

The authority shall be exempt from the provisions of RSA 541-A and may adopt rules in accordance with its own procedures to facilitate, implement, and carry out the powers, duties, and purposes of the authority enumerated in this chapter and such other and additional powers and purposes as shall be conferred upon it by the legislature. The authority shall file in the office of legislative services a copy of all existing rules adopted by the authority. Any rule adopted after the effective date of this section or any amendment or repeal of any existing rule shall be filed in the office of legislative services within 7 days of such adoption, amendment, or repeal.

Source.

1997, 329:12, eff. Oct. 1, 1997.

162-A:29. Relation to Other Agencies.

The financial and administrative operations of the authority shall be exempt from the rules of any department, commission, board, bureau, or agency of the state except to the extent and in the manner provided in this chapter.

Source.

1997, 329:12, eff. Oct. 1, 1997.

162-A:30. Authorization to Accept State Money.

The authority is authorized to accept such moneys as may be appropriated from time to time by the legislature for carrying out its corporate purpose. The authority shall repay the state all sums which are appropriated to the authority for organizational purposes in 5 annual installments, beginning with the fifth year after the receipt of such funds.

Source.

1997, 329:12, eff. Oct. 1, 1997.

162-A:31. Status of Authority Employees; Entitlement to Certain State Benefits.

I. The authority may hire, fix, and pay compensation, prescribe duties and qualifications, and establish personnel policies without regard to any personnel or civil service law or personnel or civil service rule of the state. The employees of the authority shall not be classified employees of the state within the meaning of RSA 21-I:49. Any individual employed by the authority shall be deemed an employee at will and shall serve at the pleasure of the authority.

II. Notwithstanding the provisions of paragraph I, any individual employed by the authority whose employment calls for 30 hours or more work in a normal calendar week, and whose position is anticipated to have a duration of 6 months or more, shall be entitled to elect to receive such health, dental, and life insurance benefits as are afforded to classified employees of the state, provided, however, that the election is made in writing within 30 days of the start of employment. Upon election by such individual, the authority shall pay from its revenues the state's share of such benefits. Any remaining

costs of health, dental, and life insurance benefits which an individual elects to receive pursuant to this section shall be withheld from such individual's salary as a payroll deduction. Written notice of the availability of these benefit options shall be provided to each individual upon employment by the authority. The authority may establish a qualified retirement plan and a deferred compensation plan for those individuals covered under this paragraph.

Source.

1997, 329:12, eff. Oct. 1, 1997.

TITLE XXVII
CORPORATIONS,
ASSOCIATIONS, AND
PROPRIETORS OF COMMON
LANDS

CHAPTER 292
VOLUNTARY CORPORATIONS AND
ASSOCIATIONS

Formation of Corporation

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292:28.	Reinstatement Following Publication. [Repealed.]
292:29.	Disposition of Corporate Assets.
292:30.	Revival of Charter.

Abandonment of Stock

292:31.	Abandonment of Stock or Certificate.
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Use of Volunteer Protection Act of 1997 in civil actions.
1998, 129:1, eff. June 2, 1998, provided: "Pursuant to 42 USCS sections 14501-14505, the Volunteer Protection Act of 1997, the state of New Hampshire hereby exercises its right under such statute to elect not to have the Volunteer Protection Act of 1997 apply to any civil action against a volunteer, in a New Hampshire court, in which all parties are citizens of the state of New Hampshire."

Cross References.

Business corporations, see RSA 293-A.
Corporate credit unions, see RSA 394-B:56 et seq.
Nonprofit health service corporations, see RSA 420-A.
Professional corporations, see RSA 294-A.

NOTES TO DECISIONS

Applicability

Community association which was a nonprofit corporation established under this chapter, which owned and managed community property within a condominium complex and to which all unit owners belonged was, as a corporate entity, subject to the provisions of this chapter, not RSA chapter 479-A, governing unit ownership of real property. *Hobson v. Hilltop Place Community Ass'n*, 122 N.H. 1023, 453 A.2d 841, 1982 N.H. LEXIS 516 (1982).

Cited:

Cited in *Nature Conservancy v. Town of Nelson*, 107 N.H. 316, 221 A.2d 776, 1966 N.H. LEXIS 183 (1966); *State v. George*, 113 N.H. 703, 313 A.2d 401, 1973 N.H. LEXIS 356 (1973); *Continental Cablevision v. Osgood Lodge # 48 I.O.O.F. Bldg. Ass'n*, 123 N.H. 215, 459 A.2d 263, 1983 N.H. LEXIS 254 (1983); *In re Hitchcock Clinic, Inc.*, 127 N.H. 62, 499 A.2d 974, 1985 N.H. LEXIS 442 (1985); *Junior Achievement of Greater Nashua, Inc. v. United Way of Greater Nashua, Inc.*, 132 N.H. 205, 562 A.2d 1318, 1989 N.H. LEXIS 89 (1989).

Formation of Corporation

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Assisting Clients in Choosing the Legal Form of Their Business: A Three-Step Method," see 33 N.H.B.J.321 (1992).

292:1. Incorporators; Purposes.

Five or more persons of lawful age may associate together by articles of agreement to form a corporation, for any of the following purposes:

I. The promotion of the cause of temperance and of any charitable or religious cause.

II. The establishment and maintenance of literary and scientific institutions, libraries, lyceums and musical, agricultural, literary, or scientific associations, the promotion of education and the arts and sciences by any other means and for mental improvement.

III. The establishment and maintenance of hospitals, homes for the aged and for invalids, and other charitable institutions.

IV. The provision of suitable grounds and other conveniences for the burial of the dead.

V. The organization and maintenance of lodges of Free Masons, Odd Fellows, and other similar societies, and for social recreation and improvement.

VI. The provision and care of walks, parks, recreational and athletic facilities, commons, roads and streets.

VII. The planting, cultivation, and protection of shade, ornamental, and forest trees.

VIII. The promotion of agriculture.

IX. The promotion of the growth and prosperity of cities, towns, and villages, including provision for recreational and athletic facilities for public use.

X. The promotion of law and order and the better enforcement of existing laws, or to prevent cruelty to animals.

XI. The protection or propagation of fish and game, and for any other purpose not prohibited by law.

XII. To provide industrial, commercial, manufacturing and warehouse facilities for the purpose of developing the growth and prosperity of the state, counties, cities, towns and villages.

XIII. To serve and promote the recreational and athletic interests of the state of New Hampshire or any town or individual group thereof.

XIV. The provision of mental health services.

XV. Any other purpose for which an organization may be exempt from federal taxation under section 501 of the Internal Revenue Code of 1954, and any amendments thereto.

Source.

RS 145:1.1846, 325:1. CS 152:1.1866, 4224:1. GS 137:1; 138:1.1872, 6:1. GL 151:1; 152:1. PS 147:1.1895, 1:1. PL 223:1. RL 272:1. RSA 292:1.1965, 74:1. 1967, 102:1; 359:2. 1969, 43:1. 1977, 407:1. 1991, 261:1-3, eff. Jan. 1, 1992.

References in text.

Section 501 of the Internal Revenue Code of 1954, referred to in par. XV, is classified to 26 USCS § 501.

Amendments

—1991. Paragraph VI: Inserted "recreational and athletic facilities" preceding "commons".

Paragraph IX: Added "including provision for recreational and athletic facilities for public use" following "villages".

Paragraph XIII: Inserted "and athletic" following "recreational" and substituted "any town or individual group" for "a section" preceding "thereof".

—1977. Paragraph XV: Added.

—1969. Paragraph XIV: Added.

—1967. Paragraph VI: Chapter 102 deleted "and" preceding "commons" and added "roads and streets" thereafter.

Paragraph XIII: Added by ch.359.

—1965. Paragraph XII: Added.

Revision note.

In the introductory clause, substituted "any" for "either" for purposes of clarity.

NOTES TO DECISIONS

1. Subscribers
2. Established societies
3. Hospitals
4. Masonic lodges

1. Subscribers

An agreement to take shares of a corporation to be thereafter organized is binding upon the subscribers and constitutes a good consideration for a promise on the part of third persons to pay in money toward the purpose contemplated in the agreement. *Ashuelot Boot & Shoe Co. v. Hoit*, 56 N.H. 548, 1876 N.H. LEXIS 180 (1876).

2. Established societies

On incorporation of an established society, the corporation acquires at least an equitable title incontestable by the minority as to the rights, assets and name of the society, without a formal vote of transference. *Wiltowski v. Wojciechowski*, 84 N.H. 262, 149 A. 506, 1930 N.H. LEXIS 75 (1930).

3. Hospitals

The powers and duties of a corporation formed for the establishment and maintenance of a hospital are the same as those of other similar corporations. *Hewett v. Woman's Hospital Aid Association*, 73 N.H. 556, 64 A. 190, 1906 N.H. LEXIS 33, 7 L.R.A. (n.s.) 496 (1906).

4. Masonic lodges

The provision that five or more persons may incorporate for the purpose of the organization and maintenance of Masonic lodges and other similar societies shows a clear design to include the incorporation of established societies; and such a society may, by the majority action of its members and against the will of the minority vote, become incorporated. *Wiltowski v. Wojciechowski*, 84 N.H. 262, 149 A. 506, 1930 N.H. LEXIS 75 (1930).

Cited:

Cited in *Institute for Trend Research v. Brown*, 100 N.H. 286, 124 A.2d 195, 1956 N.H. LEXIS 53 (1956); *Opinion of the Justices*, 106 N.H. 180, 207 A.2d 574, 1965 N.H. LEXIS 125 (1965); *In re New Hampshire Disabilities Rights Ctr.*, 130 N.H. 328, 541 A.2d 208, 1988 N.H. LEXIS 19 (1988); *Appeal of City of Franklin*, 137 N.H. 723, 634 A.2d 1000, 1993 N.H. LEXIS 156 (1993).

292:1-a. Legal Services.

Five or more persons of lawful age may associate together by articles of agreement to form a

corporation, without a capital stock, for the purpose of providing professional legal services to the poor; provided, however, that no such corporation shall commence business until its articles of agreement and by-laws, and such other information as may be required, have been submitted to the supreme court for approval and such court has authorized it to commence business upon finding that it is a responsible organization. Such authorization may, after hearing, be revoked or suspended by the court for just cause. The actual practice of law by such corporation shall be conducted solely by members of the New Hampshire bar in good standing, and the fact of incorporation shall not in any way be deemed to immunize any attorney employed by the corporation from personal responsibility and liability to the clients whom he serves. The provisions of RSA 311:11 shall not apply to corporations organized under this section.

Source.
1967, 239:1, eff. Aug. 22, 1967.

NOTES TO DECISIONS

Clients

This section, authorizing formation of nonprofit corporations for the purpose of providing legal services to the poor, confines such corporations relying on its terms to representing the "poor" alone. In re New Hampshire Disabilities Rights Ctr., 130 N.H. 328, 541 A.2d 208, 1988 N.H. LEXIS 19 (1988).
Petition filed by the New Hampshire Disabilities Rights Center, Inc. (DRC), a nonprofit corporation providing representation to disabled persons, seeking approval to expand the class of its clients to include those who were not poor was granted, based on an associational right under the first amendment to engage in advocacy on behalf of the disabled; recognition of the first amendment right precluded enforcement of RSA 311:11, prohibiting corporation from practicing law, so as to prevent the DRC from providing legal services to the non-indigent. In re New Hampshire Disabilities Rights Ctr., 130 N.H. 328, 541 A.2d 208, 1988 N.H. LEXIS 19 (1988).

292:2. Articles of Agreement.

- The articles of agreement shall contain the following:
- I. The name of the corporation.
 - II. The object for which the corporation is established.
 - II-a. The provisions for establishing membership and participation in the corporation.
 - III. The provisions for disposition of the corporate assets in the event of dissolution of the corporation, including the prioritization of rights of shareholders and members to corporate assets.
 - IV. The address at which the business of the corporation is to be carried on.
 - V. The amount of capital stock, if any, or the number of shares or membership certificates, if any, and provisions for retirement, reacquisition and redemption of those shares or certificates.
 - V-a. (a) The articles of agreement may contain a provision eliminating or limiting the personal liability of a director, an officer, or both,

to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, an officer, or both, except with respect to:

- (1) Any breach of the director's or officer's duty of loyalty to the corporation or its shareholders.
- (2) Acts or omissions which are not in good faith or which involve intentional misconduct or a knowing violation of law.
- (3) Any transaction from which the director, officer, or both, derived an improper personal benefit.

(b) This paragraph shall not be construed to eliminate or limit the liability of a director, an officer, or both, for any act or omission occurring before January 1, 1992.

VI. The signature and post office address of each of the persons associating together to form the corporation.

Source.
RS 145:2. CS 152:2.1866, 4224:2. GS 137:2; 138:2. GL 151:2; 152:2. PS 147:2. PL 223:2. RL 272:2. RSA 292:2.1971, 73:1. 1991, 261:4, eff. Jan. 1, 1992.

Amendments

- 1991. Added par. II-a and "including the prioritization of rights of shareholders and members to corporate assets" at the end of par. III, inserted "or membership certificates" following "shares" and added "and provisions for retirement, reacquisition and redemption of those shares or certificates" at the end of par. V, added par. V-a and made other minor stylistic changes throughout the section.
- 1971. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.
Articles of agreement of orthodox religious corporation, see RSA 292:17.

NOTES TO DECISIONS

- 1. Form
 - 2. Signatures
 - 3. Place of business
- 1. Form**
The articles of agreement may be printed instead of written. *Unity Insurance Co. v. Cram*, 43 N.H. 636, 1862 N.H. LEXIS 125 (1862).
- 2. Signatures**
Subscription of the articles of agreement is essential to the formation of a corporation. *Unity Insurance Co. v. Cram*, 43 N.H. 636, 1862 N.H. LEXIS 125 (1862).
- 3. Place of business**
The duty of disclosing the place in which the business of the corporation is to be carried on is not performed by stating an imaginary situs. *Woodsum S. B. Co. v. Sunapee*, 74 N.H. 495, 69 A. 577, 1908 N.H. LEXIS 4 (1908).
The words "the place where business is carried on" do not mean the place where a clerk's records are kept and stockholders' meetings are held, but means the place where the principal business of the corporation is executed. *Woodsum S. B. Co. v. Sunapee*, 74 N.H. 495, 69 A. 577, 1908 N.H. LEXIS 4 (1908).
The statement that the office of the corporation shall be in a certain city, where stockholders' meetings were held and the records of such meetings kept, does not meet the requirement that the articles of association shall state the place in which the business of the corporation is to be carried on. *Kennett v.*

Woodworth-Mason Co., 68 N.H. 432, 39 A. 585, 1895 N.H. LEXIS 76 (1896).

292:2-a. Charitable Corporations; Required Provisions.

Every charitable corporation established under this chapter which is a private foundation as defined in section 509(a) of the United States Internal Revenue Code of 1954, and which is in existence on the effective date of this section, or which is thereafter established, is subject to the following provisions, whether they are set forth in the articles of agreement or not:

I. A corporation which is a "private foundation" as defined in section 509(a) of the Internal Revenue Code of 1954, shall not:

(a) Engage in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(b) Retain any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954; nor

(c) Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; nor

(d) Make any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954.

II. Each corporation which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954 shall distribute, for the purposes specified in its articles of organization, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954.

III. The provisions of paragraphs I and II shall apply to any corporation except to the extent that a court of competent jurisdiction determines that to apply these provisions would be contrary to the terms of the articles of agreement or other instrument governing the corporation or the administration of charitable funds held by it, and that the articles or the other instrument cannot properly be changed to conform to these provisions.

IV. Nothing in this section impairs the rights and powers of the courts or of the attorney general with respect to any corporation.

V. All references to sections of the Internal Revenue Code of 1954 include amendments to those sections which are made after the effective date of this section, and include all correspond-

ing provisions of any United States Internal Revenue laws which replace the Internal Revenue Code of 1954.

Source.

1971, 378:1, eff. Aug. 27, 1971; 584:3, 4, eff. Sept. 29, 1971.

References in text.

Section 509 of the Internal Revenue Code of 1954, referred to in the introductory clause and pars. I and II, is classified to 26 USCS § 509.

Section 4941 of the Internal Revenue Code of 1954, referred to in subpar. I(a), is classified to 26 USCS § 4941.

Section 4943 of the Internal Revenue Code of 1954, referred to in subpar. I(b), is classified to 26 USCS § 4943.

Section 4944 of the Internal Revenue Code of 1954, referred to in subpar. I(c), is classified to 26 USCS § 4944.

Section 4945 of the Internal Revenue Code of 1954, referred to in subpar. I(d), is classified to 26 USCS § 4945.

Section 4942 of the Internal Revenue Code of 1954, referred to in par. II, is classified to 26 USCS § 4942.

Editor's note.

The effective date of this section, to which reference is made in the introductory paragraph and par. V, was August 27, 1971.

Amendments

—1971. Paragraph I(c): Former par. I(c) redesignated as par. I(d) and new par. I(c) added.

Paragraph I(d): Redesignated from former par. I(c).

Cross References.

Disposition of assets of charitable corporations, see RSA 292:29.

Private foundations created by legislative act, see RSA 292:24.

Procedure for dissolution of charitable corporations, see RSA 292:9.

NOTES TO DECISIONS

Cited:

Cited in *In re New Hampshire Disabilities Rights Ctr.*, 130 N.H. 328, 541 A.2d 208, 1988 N.H. LEXIS 19 (1988).

292:3. Name.

I. A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RSA 292:1 and its articles of agreement.

II. Except as authorized by paragraphs III and IV, a corporation name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, RSA 304-C.

(c) The fictitious name of another foreign corporation authorized to transact business in this state.

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(e) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

III. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in paragraph II, as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(a) The holder or holders of the name as described in paragraph II gives written consent to use the name that is not distinguishable from or likely to be confused with or mistaken for the name of the applying corporation; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(b) The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying corporation; or

(c) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

IV. A corporation may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user corporation:

(a) Has merged with the other entity;

(b) Has been formed by reorganization of the other entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other entity.

V. This chapter does not control the use of fictitious names.

VI. Nothing in this section shall prohibit the owner or owners of a trade name registered under RSA 349 to form a domestic corporation under the same name as the trade name.

Source.

PS 147:3. PL 223:3. RL 272:3. RSA 292:3.1988, 93:4. 1991, 67:2, eff. May 9, 1991.1999, 293:1, eff. July 16, 1999. 2004, 248:1, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

—1999. Rewritten to the extent that a detailed comparison would be impracticable.

—1991. Inserted "New Hampshire investment trust" following "registered name" and made other minor stylistic changes.

—1988. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Change of corporate name, see RSA 292:7.

Limitation on name of higher education corporation, see RSA 292:8-g.

292:4. Record of Articles of Agreement; Effect.

The articles of agreement shall be recorded in the office of the secretary of state. When so recorded, the signers thereof shall be a corporation, and such corporation, its officers, and members shall have all the rights and powers and be subject to all the duties and liabilities of other similar corporations incorporated under this chapter, their officers, and members, except so far as they are limited or enlarged by this chapter. Subsequent to filing with the secretary of state a copy shall be filed in the office of the clerk of the town in which the mailing address of the corporation is located.

Source.

1866, 4224:1. GS 138:1. GL 152:1. PS 147:4. PL 223:4. RL 272:4. RSA 292:4.1991, 261:5, eff. Jan. 1, 1992. 2004, 248:2, eff. July 1, 2004.

Amendments

—2004. Deleted "in the office of the clerk of the town in which the business of the corporation is to be carried on, and" following "shall be recorded" in the first sentence and added the third sentence.

—1991. Rewrote the existing text of the section as the first and second sentences.

Cross References.

Fee for recording articles of agreement in the office of the secretary of state, see RSA 292:5.

Submission of articles of agreement of higher education corporation to postsecondary education commission, see RSA 292:8-c.

NOTES TO DECISIONS

1. Prior law
2. Construction with other law

1. Prior law

Compliance with this section is essential to the formation of the corporation. *Unity Insurance Co. v. Cram*, 43 N.H. 636, 1862 N.H. LEXIS 125 (1862).

2. Construction with other law

Fish and game club organized not for profit, but rather to promote hunting and fishing, was not "similar" to corporations to which [former] RSA 294:41, which allowed corporations organized to carry on business for profit to sell or lease all their property by a two-thirds vote of present and voting stockholders, applied, and RSA 294:41 did not apply to fish and game club as it was not organized for profit. *Horseshoe Fish & Game Club v. Merrimack Village Dist.*, 112 N.H. 94, 291 A.2d 251, 1972 N.H. LEXIS 150 (1972).

292:5. Fees for Recording.

The fee for recording the articles of agreement in the office of the secretary of state as required in RSA 292:4 shall be \$25. The fee for recording any record of amendment in the office of the secretary of state as required in RSA 292:7 shall be \$25. The fee for recording the articles of agreement or amendments to such articles in

the office of the town or city clerk as required in RSA 292:4 and RSA 292:7 shall be \$5.

Source.

1949, 265:1. RSA 292:5. 1955, 171:7. 1989, 408:64. 1991, 252:2, eff. Aug. 9, 1991.

Amendments

—1991. Added the third sentence.

—1989. Substituted "\$25" for "\$10" in the first and second sentences.

—1955. Increased recording fees from five to ten dollars.

Severability

—1989 amendment. 1989, 408 was subject to a severability clause. See 1989, 408:109.

292:5-a. Returns, Filing Fee, Penalty.

[Repealed 1957, 32:1, eff. March 16, 1957.]

Former section(s).

Former RSA 292:5-a, which was derived from 1955, 171:8 and amended by 1955, 448:5, related to annual returns.

292:5-b. Foreign Nonprofit Corporations; Registration, Fees.

A foreign nonprofit corporation established for any of the purposes set forth in RSA 292:1 or for a substantially similar purpose, desiring to do business in this state in furtherance of such purpose for the benefit of citizens of this state, may register as a foreign corporation by making application as provided in RSA 293-A:15.03, excepting those portions relative to using a form of the words "corporation," "company," "incorporated" or "limited" in the corporate name. Any such foreign nonprofit corporation shall file the return and pay the fee provided in RSA 292:25—29.

Source.

1977, 461:2. 1979, 92:1. 1985, 339:1. 1989, 256:2. 1992, 255:3, eff. Jan. 1, 1993.

Amendments

—1992. Substituted "RSA 293-A:15.03" for "RSA 293-A:114" preceding "excepting" and "those portions relative to using a form of the words 'corporation,' 'company,' 'incorporated' or 'limited' in the corporate name" for "RSA 293-A:114, I(b), and RSA 293-A:115" thereafter in the first sentence.

—1989. Deleted "decennial" preceding "return" in the second sentence.

—1985. Substituted "RSA 293-A:114, excepting 293-A:114, I(b), and RSA 293-A:115" for "RSA 300:4 and paying the fee provided in RSA 292:5" at the end of the first sentence and deleted the third and fourth sentences.

—1979. Deleted "under a contract to be approved by the governor and council and" preceding "in furtherance" in the first sentence and substituted "record of organization" for "corporate charter" preceding "shall be presented" and "with the application" for "by the registered agent upon demand and" preceding "at no cost" in the third sentence.

292:6. Bylaws; Organization.

The initial bylaws of a corporation shall be adopted by a $\frac{2}{3}$ majority action of the signers of the articles of agreement. The power to alter,

amend or repeal the bylaws or to adopt new bylaws, subject to repeal or change by a $\frac{2}{3}$ majority action of the shareholders or holders of membership certificates, shall be vested in the board of directors unless reserved to the shareholders or holders of membership certificates by the articles of agreement. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with the laws of the state or the articles of agreement, including provisions for issuance and reacquisition of membership certificates.

Source.

PS 147:5. PL 223:5. RL 272:5. RSA 292:6. 1991, 261:6, eff. Jan. 1, 1992.

Amendments

—1991. Rewritten to the extent that a detailed comparison would be impracticable.

292:6-a. Board of Directors of Charitable Nonprofit Corporations.

In the interest of encouraging diversity of discussion, connection with the public, and public confidence, the board of directors of a charitable nonprofit corporation shall have at least 5 voting members, who are not of the same immediate family or related by blood or marriage. No employee of a charitable nonprofit corporation shall hold the position of chairperson or presiding officer of the board. This section shall not apply to those nonprofit corporations in existence on August 10, 1996, until one year after August 10, 1996, nor to any organization qualified as a private foundation under the applicable provisions of the United States Internal Revenue Code, nor to religious organizations, churches, or the integrated auxiliaries thereof or to conventions or associations of churches. The provisions of this section may be waived with the approval of the director of charitable trusts after application for such waiver.

Source.

1996, 302:3, eff. Aug. 10, 1996. 1997, 184:5, eff. Jan. 1, 1998.

References in text.

The United States Internal Revenue Code, referred to in the third sentence, is classified to 26 USCS § 1 et seq.

Amendments

—1997. Substituted "August 10, 1996" for "the effective date of this section" and "such effective date" and added "nor to religious organizations, churches, or the integrated auxiliaries thereof or to conventions or associations of churches" in the third sentence.

Powers of Corporations

292:7. Change of Name; Amending Articles.

Any corporation now or hereafter organized or registered in accordance with the provisions of this chapter, and any existing corporation which may have been so organized or registered, may change its name, increase or de-

crease its capital stock or membership certificates, merge with or acquire any other corporation formed pursuant to this chapter, or amend its articles of agreement, by a majority vote of such corporation's board of directors or trustees, at a meeting duly called for that purpose, and by recording a certified copy of such vote in the office of the secretary of state and in the office of the clerk of the town or city in this state which is its principal place of business. In the case of a foreign nonprofit corporation registered in New Hampshire, a copy of the amendment or plan of merger, certified by the proper officer of the state of incorporation, shall be filed with the secretary of state, together with the fee provided in RSA 292:5. The surviving corporation in a merger shall continue to have all the authority and powers vested in the merging corporations, including any powers previously conferred upon them by the legislature.

Source.

1895, 1:2. 1897, 49:1. PL 223:6.1931, 69:1. RL 272:6. RSA 292:7. 1971, 73:2. 1983, 112:11. 1988, 93:5. 1991, 261:7, eff. Jan. 1, 1992.

Amendments

—1991. Inserted "or membership certificates" following "capital stock" in the first sentence.

—1988. In the first sentence, inserted "or registered" following "organized" in two places, substituted "corporation's board of directors or trustees" for "corporation" following "majority vote of such" and added the second and third sentences.

—1983. Substituted "of this chapter" for "hereof" following "provisions", "may" for "might" following "corporation which", and inserted "merge with or acquire any other corporation formed pursuant to this chapter" following "capital stock".

—1971. Substituted "agreement" for "association" following "articles of".

Cross References.

Fee for recording record of amendment in the office of the secretary of state, see RSA 292:5.

292:8. Capital Structure.

The corporation may generate funds through its members, including, but not limited to:

- I. Issuance of membership certificates or stock certificates, or both, in the corporation.
- II. Receipt of contributions to capital.
- III. Assessment of dues and fees on members.

Source.

RS 145:9. CS 152:9. GS 137:7. GL 151:7. PS 147:9. PL 223:8. RL 272:7. RSA 292:8. 1971, 73:3. 1991, 261:8, eff. Jan. 1, 1992.

Amendments

—1991. Rewritten to the extent that a detailed comparison would be impracticable.

—1971. Substituted "agreement" for "association" following "articles of".

Failure to Make Returns

292:8-a. Disposition of Records by Secretary of State.

[Repealed 1975, 95:2, eff. June 21, 1975.]

Former section(s).

Former RSA 292:8-a, which was derived from 1957, 32:2, related to disposition of records of inactive voluntary corporations.

Higher Education Corporations

Cross References.

Establishment of branches or extension courses in New Hampshire by out-of-state institutions of higher learning, see RSA 186:13-b and 13-c.

292:8-b. Terms Defined.

The following words as used in this subdivision shall be construed as follows:

I. "Commission" means the postsecondary education commission, established by RSA 188-D.

II. "Higher learning" means studies which are more advanced or difficult than those prevalently offered in a secondary school and which are creditable toward an academic or professional degree.

III. "Degree" means the formal recognition of a stage of progress in the pursuit of higher learning, including the associate, bachelor's, master's, doctorate, professional, or other award, diploma or the equivalent under any other designation.

Source.

1965, 44:1. 1973, 533:4, eff. July 1, 1973.

Amendments

—1973. Paragraph I: Rewritten to the extent that a detailed comparison would be impracticable.

292:8-c. Organization.

The articles of agreement for the purpose of organizing a corporation for the establishment of an institution for postsecondary education or higher learning shall be submitted to the postsecondary education commission for its consent for said incorporation.

Source.

1965, 44:1. 1973, 533:5. 1977, 407:2, eff. Sept. 3, 1977.

Amendments

—1977. Rewritten to the extent that a detailed comparison would be impracticable.

—1973. Substituted "postsecondary education commission" for "coordinating board of advanced education and accreditation" preceding "for its consent" in the third sentence.

Cross References.

Submission of plans to the postsecondary education commission, see RSA 292:8-f.

292:8-d. Approval.

No articles of agreement for the incorporation of institutions for postsecondary or higher education shall be recorded in the office of the secretary of state unless or until consent for said incorporation has been obtained from the commission.

Source.

1965, 44:1. 1973, 533:6. 1977, 407:3, eff. Sept. 3, 1977.

Amendments

—1977. Deleted “the same have been approved by the attorney general or an assistant attorney general and” following “until”.

—1973. Substituted “commission” for “board” at the end of the section.

292:8-e. General Statement.

The commission shall approve as a corporation of higher learning only such institutions as have been evaluated according to procedures and standards established by the commission.

Source.

1965, 44:1. 1973, 533:7, eff. July 1, 1973.

Amendments

—1973. Substituted “commission” for “board” at the beginning and end of the section.

292:8-ee. Freedom from Liability.

No member of the postsecondary education commission nor any member of an evaluation committee established under any provision of this subdivision shall be held personally liable, either as an individual or as a member of a group, for any loss which may accrue to an educational institution as a result of the denial of degree granting authority under any section of this subdivision, so long as said member was acting in good faith in the furtherance of duties as a member of the postsecondary education commission or an evaluation committee. All such members shall be entitled to the protections afforded by RSA 99-D.

Source.

1983, 141:1, eff. Aug. 6, 1983.

292:8-f. Submission of Plans.

Any person desiring to establish an institution of higher learning shall submit to the commission, at the time approval is requested for its articles of incorporation, its plans, which shall be evaluated by the commission prior to granting its certificate. Such evaluation shall include among other things the adequacy of the buildings or proposed buildings, instructional facilities and provisions for safety and well-being of its students, the qualifications of the faculty, the character of the program of studies and the adequacy of financial resources.

Source.

1965, 44:1. 1967, 288:2. 1973, 533:8, eff. July 1, 1973.

Amendments

—1973. Substituted “commission” for “board” preceding “at the time” and “prior to” in the first sentence.

—1967. Deleted the former second sentence.

292:8-ff. Continuing Review.

I. The commission shall conduct periodic re-evaluations of educational institutions incorporated under this chapter, and of any degree granting authority under RSA 292:8-h.

II. The commission shall conduct a special reevaluation of any educational institution, if:

(a) The institution is sold or transferred to, or merged with, another entity; or

(b) There is a substantial change in the governance of the institution.

III. The commission shall suspend or revoke the accreditation or degree granting authority of any institution which no longer meets the standards established by rule under RSA 188-D:8-a.

IV. Any institution which has not conducted regular instruction for 3 consecutive years and whose charter has not been repealed shall, before announcing a resumption of instruction, submit plans and be evaluated and approved under RSA 292:8-f.

V. Any institution which has not awarded a particular degree for 4 years shall seek and receive approval by the commission before awarding that degree.

Source.

1969, 4:2. 1973, 533:9. 1981, 574:4, eff. Sept. 5, 1981.

Amendments

—1981. Rewritten to the extent that a detailed comparison would be impracticable.

—1973. Substituted “commission” for “board” following “plans to the”.

292:8-g. Limitation on Name.

Notwithstanding the provisions of RSA 292:3 no person, school, association or corporation shall use in any way the term “junior college” or “college” or “university” in connection with an institution, or use any other name, title or descriptive matter tending to designate that it is an institution of higher learning unless it has been incorporated under the provisions of this chapter. The provisions of this section shall not apply to a person, school, association or corporation which has been authorized to use said terms by law prior to January 1, 1965. Any person, school, association or corporation authorized by a special act of the legislature shall not change its name to include any of said terms under the provisions of RSA 292:8-l unless its amendment therefor shall be submitted to and approved by the commission prior to being filed in the office of the secretary of state.

Source.

1965, 44:1. 1967, 92:2. 1973, 533:10, eff. July 1, 1973.

Amendments

—1973. Substituted “commission” for “board” preceding “prior” in the last sentence.

—1967. Added the last sentence.

Cross References.

Injunction to prevent or restrain violation of provisions of section, see RSA 292:8-j.

Penalty for violating provisions of section, see RSA 292:8-i.

292:8-h. Granting of Degrees.

I. This section shall apply to all educational institutions within the state granting degrees or seeking to do so, except the following:

(a) Any institution now granting degrees which has been in continuous operation since before 1775;

(b) [Repealed.]

(c) Publicly supported institutions placed by the legislature under the authority of the state board of education.

II. No educational institution shall grant degrees unless authorized by name to do so by an act of the legislature.

III. The postsecondary education commission shall specify the degrees an institution may grant, and the commission may renew, for a set term of years, degree granting authority granted by the legislature. The commission's actions shall be subject to biennial certification by the legislature. The commission shall report its action by January 31 of each odd-numbered year to both the house and senate standing committees on education.

Source.

1965, 44:1. 1971, 540:3. 1973, 533:11. 1981, 574:1. 1983, 239:10, eff. June 18, 1983.

Amendments

—1983. Paragraph I(b): Repealed.

—1981. Rewritten to the extent that a detailed comparison would be impracticable.

—1973. Substituted "commission" for "board" preceding "shall determine" in the fourth sentence and "which shall report" in the sixth sentence.

—1971. Added the third, fourth, fifth and sixth sentences.

Cross References.

Granting of degrees by university system of New Hampshire, see RSA 187-A:3.

Injunction to prevent or restrain violation of provisions of section, see RSA 292:8-j.

Penalty for violating provisions of section, see RSA 292:8-i.

RESEARCH REFERENCES

ALR.

College's power to revoke degree. 57 A.L.R.4th 1243.

292:8-i. Penalty.

Any person who shall violate the provisions of RSA 292:8-g or 292:8-h shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source.

1965, 44:1. 1973, 529:61, eff. at 11:59 p.m., Oct. 31, 1973.

Amendments

—1973. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Classification of crimes, see RSA 625:9.

Sentences, see RSA 651.

292:8-j. Injunctive Relief.

In addition to the penalty provided by RSA 292:8-i, the commission may institute in any court of competent jurisdiction, an action to prevent or restrain any violation of the provisions of RSA 292:8-g or 8-h and the court shall adjudge to the plaintiff such relief by way of injunction (which may be mandatory) or otherwise as may be proper under all the facts and circumstances of the case, in order to fully effectuate the purpose of this subdivision.

Source.

1965, 44:1. 1973, 533:12, eff. July 1, 1973.

Amendments

—1973. Substituted "commission" for "board" preceding "may institute".

292:8-k. Exemption.

[Repealed 1973, 533:15, eff. July 1, 1973.]

Former section(s).

Former RSA 292:8-k, which was derived from 1965, 44:1, exempted corporations organized under RSA 292-A from the provisions of this subdivision.

292:8-kk. Reports Required.

I. When any institution of higher learning ceases the regular conduct of instruction, either temporarily or permanently, whether or not the corporation is dissolved, the academic record, or a legible, certified copy thereof, of each student who has been registered for instruction at the institution shall be forwarded to the postsecondary education commission together with an explanation of the institution's credit and grading system. The postsecondary education commission shall preserve these records and upon request of the individual concerned, shall furnish a certified copy, or reasonable number of such copies, of the individual's record. The fee for each record so furnished to be paid to the commission shall be a reasonable fee based on average fees collected by United States institutions.

II. All transcript request fees collected by the postsecondary education commission under this section shall be deposited into a nonlapsing, revolving fund to be used for managing the storage, maintenance, and retrieval of closed school transcripts.

Source.

1969, 4:1. 1973, 533:13. 1979, 87:1, eff. June 29, 1979. 2003, 235:4, eff. Sept. 5, 2003. 2004, 105:1, eff. July 16, 2004.

Amendments

—2004. Designated the existing provisions of the section as par. I and deleted the fourth sentence in that paragraph and added par. II.

—2003. Substituted "a reasonable fee based on average fees collected by United States institutions" for "\$2 per copy of a student transcript" in the third sentence.

—1979. Rewrote the third sentence and made minor stylistic change in the fourth sentence.

—1973. Substituted “postsecondary education commission” for “coordinating board of advanced education” in the first and second sentences and “commission” for “board” at the end of the third and fourth sentences.

Special Corporations

292:8-1. Powers Extended.

Any non-profit corporation heretofore organized by special act of the legislature for purposes as set forth by RSA 292:1 may:

I. Change its name, eliminate any limitation on the assets it is authorized to hold, provide for distribution of its assets upon dissolution of the said corporation, by a majority vote of such corporation, unless otherwise provided by any such special act or the bylaws of any such corporation, at a meeting duly called for that purpose, and by recording a certified copy of such vote in the office of the secretary of state. The fee for recording said certified copy in the office of the secretary of state shall be \$25.

II. Change its purpose by a majority vote of said corporation. A written notice of the proposed change shall be provided to the director of charitable trusts, department of justice and the notice of proposed changes shall be published in a newspaper of general circulation by the trustees at least 30 days before the vote is taken. The proposed change shall also be submitted for review by the probate court. If legal cause exists which would prevent the proposed change in purpose, the director of charitable trusts shall have 30 days to notify the corporation of any additional requirements. A certified copy of the vote shall be filed in the office of the secretary of state. The fee for recording said certified copy in the office of the secretary of state shall be \$25. Nothing in this paragraph shall be construed to supersede the intent of RSA 7:19 - RSA 7:32-a.

Source.

1967, 92:1, eff. July 7, 1967. 2005, 282:1, eff. September 20, 2005. 2006, 316:1, eff. July 1, 2006.

Revision note.

In the last sentence of par. II, changed “supersede” to “supersede” to correct a typographical error.

Amendments

—2006. Paragraph I: Substituted “\$25” for “\$10” in the second sentence.

Paragraph II: Substituted “\$25” for “\$10” in the sixth sentence.

—2005. Designated existing provision as paragraph I and deleted “may” preceding “eliminate” and “provide” in the first sentence, and added paragraph II.

Cross References.

Change of name by higher education corporation authorized by special act of the legislature, see RSA 292:8-g.

Dissolution of Corporation

Cross References.

Dissolution of religious societies, see RSA 308.

292:9. Procedure.

I. Any such corporation, or $\frac{1}{4}$ of the members thereof, may apply by petition to the superior court, or in the case of a charitable corporation to the superior court or the probate court, in the county in which the corporation is located, for a decree of dissolution, or for such other relief as may be just; and the court, after due notice to all parties interested and a hearing, may decree that the corporation be dissolved, subject to such limitations and conditions as justice may require. The attorney general shall be notified and given an opportunity to be heard in all cases involving charitable corporations.

II. The court shall have the right to appoint a guardian ad litem in the event that any members or shareholders, or both, are unknown or have abandoned a stock interest or membership interest in the corporation. The guardian ad litem shall file a report with the court setting forth its findings with respect to: the attempt to notify the unknown shareholders or members or both; any response from the unknown shareholders or members or both; and the length of time since the date of last contact by the unknown shareholder or member with the corporation.

III. The court shall have the discretion, after reviewing the report of the guardian ad litem, to conclude the extent of the rights and interests of the shareholders or members, or both, who are unknown or have abandoned their interests.

IV. No member or shareholder shall be entitled to receive an amount from a dissolution of assets greater than the member's or shareholder's total contribution to capital or purchase price, or both, of membership certificates. Any and all funds which may be payable to members or shareholders, or both, who have been adjudicated to have abandoned their interests under this section shall revert to the corporation as capital assets.

Source.

1887, 72:1. 1891, 46:1. PS 147:10. PL 223:9. RL 272:8. RSA 292:9. 1991, 261:9. 1992, 284:5, eff. Jan. 1, 1993.

Amendments

—1992. Paragraph I: Inserted “or in the case of a charitable corporation to the superior court or the probate court” preceding “in the county” in the first sentence and added the second sentence.

—1991. Designated the existing provisions of the section as par. I and added pars. II through IV.

Cross References.

Attorney general's office, see RSA 21-M.

Dissolution by vote, see RSA 292:10-a.

Filing decree of dissolution, see RSA 292:10.

RESEARCH REFERENCES

ALR.

Distribution of funds by nonprofit corporation absent dissolution.51 A.L.R.3d 1318.

292:10. Filing Order.

The corporation shall cause an attested copy

of the decree of the court to be filed in the office of the secretary of state forthwith after it is made; and when such copy has been so filed, the corporate existence of the corporation shall terminate in accordance with the terms of such decree.

Source.

1887, 72:3. PS 147:11. PL 223:10. RL 272:9.

292:10-a. Dissolution by Vote.

I. Except as provided in paragraph II, whenever $\frac{2}{3}$ of the membership or voting stock or both of any such corporation shall have voted to dissolve the corporation, then said corporation shall be automatically dissolved upon the filing with the secretary of state of a statement signed under the penalties of perjury by the treasurer and a majority of the directors or trustees setting forth (a) that at least $\frac{2}{3}$ of the members or stockholders voted dissolution; and (b) the plan for distribution of the corporation's assets and satisfaction of its obligations.

II. Whenever the voting membership of a church, organized under this chapter, shall have voted unanimously to dissolve the church, the church shall be automatically dissolved upon the filing with the secretary of state of a statement signed under the penalties of perjury by the treasurer and a majority of the directors or trustees setting forth (a) that all members eligible to vote voted dissolution; and (b) the plan for distribution of the church's assets and satisfaction of its obligations.

Source.

1977, 407:4. 1991, 261:10, eff. Jan. 1, 1992.

Amendments

—1991. Designated the existing provisions of the section as par. I and in that paragraph, added "except as provided in paragraph II" preceding "whenever", inserted " $\frac{2}{3}$ of" thereafter, inserted "or both" following "voting stock", substituted "to dissolve" for "unanimously the dissolution of" following "have voted" and "at least $\frac{2}{3}$ of the" for "all" preceding "members" and added par. II.

292:11. Records.

[Repealed 1985, 339:16, I, eff. June 14, 1985.]

Former section(s).

Former RSA 292:11, which was derived from 1887, 72:4; PS 147:12; PL 223:11; and RL 272:10, related to records of dissolved corporations.

Fraternal Organizations

Cross References.

Fraternal benefit societies, see RSA 418.

NOTES TO DECISIONS

Joint liability

A defendant who is sued individually for an association's debt for which he is jointly liable is required to file a plea of abatement requiring the plaintiff to join all of the other necessary parties to the suit within 30 days following entry of the plaintiff's writ, or else a waiver will result. *Shortlidge v.*

Gutoski, 125 N.H. 510, 484 A.2d 1083, 1984 N.H. LEXIS 404 (1984).

292:12. Holding Property.

Unincorporated societies or lodges of Elks, Knights of Columbus, Knights of Pythias, Masons, Moose and Odd Fellows, or other similar fraternal organizations shall be corporations so far as may be necessary to take, hold, manage and use any gift or grant made to them as such and any gifts or grants heretofore made to any such societies or lodges are hereby fully ratified and confirmed to them in their aforesaid corporate capacity, and said societies, lodges, and organizations may sue and be sued in regard to such property in said corporate capacity.

Source.

1941, 175:1. RL 272:11.

NOTES TO DECISIONS

Cited:

Cited in *Grand Lodge, I. O. O. F. v. Union Lodge, I. O. O. F.*, 111 N.H. 241, 279 A.2d 590, 1971 N.H. LEXIS 166 (1971); *Shakra v. Benedictine Sisters of Bedford, N.H., Inc.*, 131 N.H. 417, 553 A.2d 1327, 1989 N.H. LEXIS 4 (1989).

292:13. Deemed Corporations for What Purposes.

The trustees or other similar officers of such societies or lodges shall be deemed bodies corporate for the purpose of taking and holding in succession grants and gifts whether of real or personal estate made either to them and their respective societies or lodges and said trustees or other similar officers with the consent of the societies or lodges may convey the lands or other property of such societies or lodges.

Source.

1941, 175:1. RL 272:12.

NOTES TO DECISIONS

Cited:

Cited in *Grand Lodge, I. O. O. F. v. Union Lodge, I. O. O. F.*, 111 N.H. 241, 279 A.2d 590, 1971 N.H. LEXIS 166 (1971); *State v. Settle*, 129 N.H. 171, 523 A.2d 124, 1987 N.H. LEXIS 159 (1987); *Shakra v. Benedictine Sisters of Bedford, N.H., Inc.*, 131 N.H. 417, 553 A.2d 1327, 1989 N.H. LEXIS 4 (1989).

292:14. Unincorporated Association Receiving and Using Donations.

If a donation, grant or gift be made to any unincorporated association, society, foundation or similar organization, it shall be a corporation so far as may be necessary to take, hold, manage, use and convey any such donation, gift or grant made to it. Any donations, gifts or grants heretofore made to any such association, society, foundation or similar organization are hereby fully ratified and confirmed to them in their aforesaid corporate capacity, and said associa-

tion, society, foundation or similar organization may sue and be sued in regard to such property in said corporate capacity. The directors, trustees or other similar officers of such unincorporated association, society, foundation or similar organization, if citizens of the United States, shall have the power of taking, holding and conveying in succession grants, gifts and donations whether real or personal estate made either to them and their successors or to their respective association, society, foundation or similar organization, or to their beneficiaries.

Source.

1953, 142:1, eff. May 8, 1953.

NOTES TO DECISIONS

1. Technical errors
2. Faulty description

1. Technical errors

Donations, grants and gifts to charitable organizations and corporations are to be sustained in spite of technical errors in description and corporate form. In re Morrison Estate, 106 N.H. 388, 211 A.2d 904, 1965 N.H. LEXIS 175 (1965).

2. Faulty description

Any error or inaccuracy in description of beneficiary in will referring to Morrison Hospital Association was insufficient to force income into intestacy, where testator Morrison and community had recognized Morrison Hospital and Training School Association, the voluntary corporation which operated hospital at time of testator's death, as merely another name for Morrison Hospital Association, and there was no other organization in area containing Morrison in any form in its name. In re Morrison Estate, 106 N.H. 388, 211 A.2d 904, 1965 N.H. LEXIS 175 (1965).

Cited:

Cited in State v. Settle, 129 N.H. 171, 523 A.2d 124, 1987 N.H. LEXIS 159 (1987).

Orthodox Parishes

Cross References.

Religious societies generally, see RSA 306.

292:15. Application of Subdivision.

This subdivision applies to all churches, parishes, committees and other religious organizations governed by jurisdictions, archdioceses of any Orthodox Patriarchate, Synod or national church of the Orthodox Church (the One Holy Catholic and Apostolic Church), recognized by the apostolic historic Orthodox Patriarchates of Constantinople, Antioch, Moscow and Yugoslavia and in general to all churches, congregations, parishes, committees and other religious organizations founded or established with the intent and for the purpose of adhering to and maintaining the apostolic and historic communion, doctrine, discipline, canon law, tradition, worship and unity of the Orthodox Church.

Source.

1955, 88:1 par. 14, eff. April 21, 1955.

NOTES TO DECISIONS

Cited:

Cited in Shakra v. Benedictine Sisters of Bedford, N.H., Inc., 131 N.H. 417, 553 A.2d 1327, 1989 N.H. LEXIS 4 (1989).

292:16. Application for Incorporation.

An unincorporated church, congregation, parish or any other religious organization may apply to the appropriate hierarch, archbishop, bishop or administrator for permission to incorporate under this article. When such permission has been granted in writing, it shall be attached to the certificate of incorporation.

Source.

1955, 88:1 par. 15, eff. April 21, 1955.

292:17. Articles of Agreement.

The articles of agreement shall be in the form provided by law for all religious corporations and must in addition recite therein that the purpose and intent of the corporation is to maintain, propagate, practice and forever perpetuate religious worship, services, sacraments and teachings in full accordance and unity with the doctrine, ritual, canon law, faith, practice, discipline, traditions and usages of the Orthodox Church and for the carrying out of the said purpose and intent to maintain a religious organization which will be adherent and obedient to the Orthodox ecclesiastical jurisdiction and authority and which shall recognize and remain subject to the duly appointed and canonical Orthodox hierarch, archbishop, bishop or administrator appropriate for the Orthodox communicant members comprising the same.

Source.

1955, 88:1 par. 16, eff. April 21, 1955.

Common Trust Funds

292:18. Charitable Corporations.

Any charitable corporation organized under an act of the legislature or organized or registered in accordance with state law is empowered through its trustees or directors to establish, maintain and operate common trust funds as provided herewith under the appropriate standard of investment applicable to it.

Source.

1955, 160:1 par. 17. RSA 292:18.1988, 93:6, eff. April 18, 1988.

Amendments

—1988. Substituted "organized or registered in accordance with state law" for "under general state laws" preceding "is empowered".

NOTES TO DECISIONS

Cited:

Cited in Mechanics Nat'l Bank v. D'Amours, 100 N.H. 461,

129 A.2d 859, 1957 N.H. LEXIS 78, 64 A.L.R.2d 260 (1957); *Portsmouth Hospital v. Attorney General*, 104 N.H. 51, 178 A.2d 516, 1962 N.H. LEXIS 15 (1962).

292:19. Collective Investments.

Said charitable corporation may combine money and property belonging to various trusts in its care for the purpose of facilitating investments, providing diversification and obtaining a reasonable income; provided, however, that the participating contributory interest of said trusts shall be properly evidenced by appropriate bookkeeping entries showing on an annual basis the capital contribution of and the profit and income allocable to each trust; and provided, further, that not more than 10 percent of the fund shall be invested in the obligations of any one corporation or organization, excepting deposits in savings banks, obligations of the United States and of the state of New Hampshire and its subdivisions; and provided, further, that nothing herein shall be construed to authorize the investment of funds of a trust in any manner not authorized by law.

Source.

1955, 160:1 par. 18, eff. Jan. 1, 1956.

NOTES TO DECISIONS

Cited:

Cited in *Mechanics Nat'l Bank v. D'Amours*, 100 N.H. 461, 129 A.2d 859, 1957 N.H. LEXIS 78, 64 A.L.R.2d 260 (1957); *Portsmouth Hospital v. Attorney General*, 104 N.H. 51, 178 A.2d 516, 1962 N.H. LEXIS 15 (1962).

292:20. Exception.

The provisions of RSA 292:19 shall not apply where the instrument creating the particular trust specifically prohibits collective investment or where such an investment shall violate any specific court order made in any particular trust.

Source.

1955, 160:1 par. 20, eff. Jan. 1, 1956.

292:21. Contributions and Withdrawals.

Contributions to any common trust fund shall be made on the basis of its market value at the time such contribution is recorded in the books of the trustees. The withdrawal of a particular trust fund from any common trust fund shall be made proportionately on the basis of the market value of said common trust fund at the time such withdrawal is recorded in the books of the trustees.

Source.

1955, 160:1 par. 19, eff. Jan. 1, 1956.

Legislative Amendment

292:22. Legislative Amendment.

The legislature may at any time alter, amend

or repeal the charter of any voluntary corporation or the laws under which it was established, or may modify or annul any of its franchises, duties and liability; but the remedy against the corporation for any liability previously incurred shall not be impaired thereby.

Source.

1969, 33:1, eff. May 6, 1969.

New Hampshire Charitable Foundation

Revision note.

Substituted "Foundation" for "Fund" in the subdivision heading for purposes of conformity with RSA 292:23, as amended by 1992, 24:2, VII.

292:23. Public and Charitable Trust Funds.

I. Public Common Trust Funds. The New Hampshire Charitable Foundation is authorized to establish one or more public common trust funds and to accept funds for investment in such public common trust funds from public trustees including municipal trustees, provided however, that any investment in such public common trust fund may be withdrawn at such times and upon such notice as rules and regulations promulgated by the New Hampshire Charitable Foundation with the approval of the bank commissioner shall provide. The New Hampshire Charitable Foundation shall have full power to invest and reinvest such public common trust fund or funds, only (a) in securities contained in the List of Legal Securities provided in RSA 387:25, (b) New Hampshire savings banks, (c) obligations of the United States, and (d) obligations of the state of New Hampshire and its subdivisions, providing however, that not more than 10 percent of any fund shall be invested in the obligations of any one corporation or organization, excepting deposits in savings banks, obligations of the United States and of the state of New Hampshire and its subdivisions.

II. Charitable Common Trust Funds. The New Hampshire Charitable Foundation is authorized to establish one or more charitable common trust funds and to accept funds for investment in such charitable common trust funds from the trustees or managers of tax exempt organizations under the provisions of the Internal Revenue Service of the United States, provided however, that any investment in such charitable common trust fund may be withdrawn at such times and upon such notice as rules and regulations promulgated by the New Hampshire Charitable Foundation shall provide. The New Hampshire Charitable Foundation shall have full power to invest and reinvest such charitable common trust funds, subject to the terms, conditions, limitations and restrictions imposed by the laws of the state of New Hampshire upon trustees of estates in

making investments providing, however that not more than 10 percent of any fund shall be invested in the obligations of any one corporation or organization, except deposits in savings banks, obligations of the United States, and of the state of New Hampshire and its subdivisions.

III. Securities. Investment securities forming a part of any such common trust fund shall be maintained in a custodian account in a state chartered or national bank doing business in New Hampshire. Any officer or employee of the New Hampshire Charitable Foundation having access to investment securities, bank accounts or cash belonging to any such common trust fund shall be bonded.

IV. Audited Report. At least annually the New Hampshire Charitable Foundation shall prepare a report, audited by an independent certified public accountant, which shall include for each common trust fund:

(a) Balance sheet showing assets and liabilities together with statements showing:

(1) All investments at the beginning and end of each fiscal year stated at both book and market values,

(2) Changes in investments,

(3) Realized capital gains and losses,

(4) Expenses, including fees, charged to principal,

(5) Capital distributions,

(6) Net asset value of participation units at the beginning and end of the year and at any intermediate valuation date, and

(7) Participation unit capital distributions with the dates thereof.

(b) Income statement showing:

(1) Income received,

(2) Expenses, including fees, charged to income,

(3) Income distributions, and

(4) Participation unit income distributions with the dates thereof.

(c) List of all investors showing each investor's participation units at the beginning and end of each fiscal year together with additions and withdrawals.

Such audited reports shall be a public document and copies shall be submitted to the director of charitable trusts, bank commissioner and department of revenue administration—municipal services division.

V. Value of Investments and Withdrawals.

Investments in and withdrawals from the common trust fund or funds shall be at net asset values determined on the basis of market values.

VI. Rules and Regulations. The New Hampshire Charitable Foundation is authorized to issue reasonable rules and regulations with respect to the administration of the fund or funds and such rules and regulations pertaining to public common trust funds shall be subject to the prior approval of the bank commissioner.

Source.

1969, 447:4. 1973, 544:10. 1975, 439:23. 1992, 24:2, VII, eff. April 3, 1992.

References in text.

RSA 387:25, referred to in par. I, was repealed by 1982, 42:126, eff. June 29, 1982.

Amendments

—1992. Substituted "Foundation" for "Fund" following "Charitable" in pars. I, II, III, IV and VI.

—1975. Paragraph IV: Substituted "services" for "accounting" preceding "division" at the end of the paragraph.

—1973. Paragraph IV: Substituted "department of revenue administration" for "tax commission" at the end of the paragraph.

Corporations Created by Legislative Act

292:24. Charters of Voluntary Corporations Created by Legislative Act.

Every voluntary corporation created by an act of the legislature which is a private foundation as defined in section 509(a) of the United States Internal Revenue Code of 1954, and which is in existence on the effective date of this section, or which is thereafter created by an act of the legislature, is subject to the following provisions, whether they are set forth in the legislative charter or not:

I. A corporation which is a "private foundation" as defined in section 509(a) of the Internal Revenue Code of 1954, shall not:

(a) Engage in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(b) Retain any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

(c) Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; or,

(d) Make any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954.

II. Each corporation which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954 shall distribute, for the purposes specified in the act of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954.

III. Nothing in this subdivision impairs the rights and powers of the courts or of the attor-

ney general with respect to any corporation.

IV. All references to sections of the Internal Revenue Code of 1954 include amendments to those sections which are made after the effective date of this section, and include all corresponding provisions of any United States internal revenue laws which replace the Internal Revenue Code of 1954.

Source.

1971, 379:1, eff. Aug. 27, 1971.

References in text.

Section 509 of the Internal Revenue Code of 1954, referred to in the introductory clause and pars. I and II, is classified to 26 USCS § 509.

Section 4941 of the Internal Revenue Code of 1954, referred to in subpar. I(a), is classified to 26 USCS § 4941.

Section 4943 of the Internal Revenue Code of 1954, referred to in subpar. I(b), is classified to 26 USCS § 4943.

Section 4944 of the Internal Revenue Code of 1954, referred to in subpar. I(c), is classified to 26 USCS § 4944.

Section 4945 of the Internal Revenue Code of 1954, referred to in subpar. I(d), is classified to 26 USCS § 4945.

Section 4942 of the Internal Revenue Code of 1954, referred to in par. II, is classified to 26 USCS § 4942.

Editor's note.

The effective date of this section, to which reference is made in the introductory paragraph and in par. IV, was August 27, 1971.

Cross References.

Private foundations established by articles of agreement, see RSA 292:2-a.

Renewal of Charter

Editor's note.

Deleted "Decennial" preceding "Renewal" in the subdivision heading in light of the provisions of RSA 292:25, as amended by 1988, 93:7, eff. April 18, 1988, which provides for the renewal of the charter every 5 years.

292:25. Renewal Required.

I. Every corporation organized under this chapter or by act of the legislature shall, during the calendar year 1990, and every 5 years thereafter, make a return in writing to the secretary of state upon blanks to be furnished by him and shall pay a fee of \$25. The return shall be signed by the president or other officer of said corporation. The return shall state the corporation's principal address and the names and addresses of all the officers and directors or the governing board of the corporation. Any corporation which does not renew its charter as provided in this subdivision shall have its charter repealed, revoked and annulled; shall lose any right or title to the name under which it was incorporated; and shall be so advised in writing by the secretary of state.

II. The disposition of any corporate assets of any corporation that is dissolved under this section shall be performed in accordance with RSA 292:29.

Source.

1975, 95:1. 1985, 339:2. 1988, 93:7. 1989, 408:65. 1991, 261:11, eff. Jan. 1, 1992.

Amendments

—1991. Designated the existing provisions of the section as par. I and added par. II.

—1989. Substituted "\$25" for "\$10" at the end of the first sentence.

—1988. Rewrote the first and second sentences, substituted "or" for "of" preceding "the governing board" in the third sentence and deleted the fifth sentence.

—1985. Inserted "or by act of the legislature" following "this chapter" in the first sentence and "and shall be so advised in writing by the secretary of state" following "incorporated" in the fourth sentence, substituted "\$10" for "\$5" in the first sentence, deleted "and" following "revoked and annulled" in the fourth sentence, and made other minor stylistic changes.

Severability

—1989 amendment. 1989, 408 was subject to a severability clause. See 1989, 408:109.

NOTES TO DECISIONS

Cited:

Cited in *Shakra v. Benedictine Sisters of Bedford, N.H., Inc.*, 131 N.H. 417, 553 A.2d 1327, 1989 N.H. LEXIS 4 (1989).

292:26. Reinstatement.

[Repealed 1988, 93:10, eff. April 18, 1988.]

Former section(s).

Former RSA 292:26, which was derived from 1975, 95:1, related to reinstatement.

292:27. Publication Notice.

[Repealed 1985, 339:16, II, eff. June 14, 1985.]

Former section(s).

Former RSA 292:27, which was derived from 1975, 95:1, related to publication of a listing of corporations which failed to file a decennial return.

292:28. Reinstatement Following Publication.

[Repealed 1985, 339:16, III, eff. June 14, 1985.]

Former section(s).

Former RSA 292:28, which was derived from 1975, 95:1, related to reinstatement of a corporation following publication of its name in the listing of corporations which failed to file a decennial return.

292:29. Disposition of Corporate Assets.

I. Any corporation whose charter is repealed, revoked and annulled pursuant to this subdivision shall, nevertheless, continue as a body corporate for the term of 3 years from the date such charter is repealed, revoked and annulled for the purpose of presenting and defending suits by or against it and of closing and settling its concerns and distributing its assets, including the disposition and transfer of all corporate assets and property, subject to paragraphs II and III.

II. For the purpose of any suit or action by or against any such corporation, pending at the

end of said term of 3 years, such corporation shall continue as a body corporate until 90 days after final judgment or decree in such suit or action.

III. The superior court may at any time when it shall be made to appear, upon the petition of any interested party, that the protection of proprietary or other rights requires the doing of any act or thing by or in behalf of any such corporation, order the doing of such acts or things, and for this purpose may appoint and authorize an agent to act for and in the name of such corporation, and any action so ordered and done shall be effective corporate action. The probate court shall have concurrent jurisdiction with the superior court to grant relief in the case of petitions involving charitable corporations brought under this section. The attorney general shall be notified and given an opportunity to be heard in all cases involving charitable corporations.

IV. All corporate assets and property are to be disposed of in accordance with the provisions for dissolution as set forth in the articles of agreement, the bylaws, and in accordance with RSA 292:8 and 292:9.

Source.

1975, 95:1. 1991, 261:12, 13; 1992, 284:6, eff. Jan. 1, 1993.

Amendments

—1992. Paragraph III: Added the second and third sentences.

—1991. Substituted "Corporate Assets" for "Property" in the section catchline, deleted "gradually" preceding "closing" and substituted "corporate assets and property" for "or any part of the property and for no other purpose" preceding "subject" in par. I and added par. IV.

Cross References.

Attorney general's office, see RSA 21-M.

NOTES TO DECISIONS

Cited:

Cited in *Shakra v. Benedictine Sisters of Bedford, N.H., Inc.*, 131 N.H. 417, 553 A.2d 1327, 1989 N.H. LEXIS 4 (1989).

292:30. Revival of Charter.

I. Any corporation whose charter has been repealed, revoked and annulled pursuant to this subdivision may at any time procure a revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which have been secured or imposed by its original charter and all amendments thereto; provided, that if the corporation name is no longer available under the terms of RSA 292:3, the corporation shall file with its revival an amendment changing its name or a consent to use its original name.

II. The revival of the charter may be procured by filing a certificate of revival in the office of the secretary of state, which certificate is signed under oath and under penalties of per-

jury by an officer of the corporation and which certificate states:

(a) The name of the corporation, which shall be the name it bore when its certificate of incorporation expired;

(b) The address at which the business of the corporation is to be carried on;

(c) The names and addresses of all the officers and directors or governing board of the corporation;

(d) That the corporation desiring to be revived and so reviving its charter was organized under the laws of this state;

(e) The facts as may show that the charter has been forfeited pursuant to this subdivision;

(f) That the certificate is filed by authority of those who were directors or members of the governing body of the corporation at the time its charter was repealed, revoked and annulled, or who were elected directors or members of the governing body of the corporation as provided in paragraph VI of this section;

(g) [Repealed.]

III. Upon the filing of the certificate of revival, the corporation shall be revived with the same force and effect as if its charter had not been forfeited pursuant to this subdivision. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its charter by the corporation, its officers and agents during the time when its charter was forfeited pursuant to this subdivision, with the same force and effect and to all intents and purposes as if the charter had at all times remained in full force and effect, except as provided in paragraph IX. All real and personal property, rights and credits, which belonged to the corporation at the time its charter became forfeited pursuant to this subdivision and which were not disposed of prior to the time of its revival shall be vested in the corporation after its revival as fully and amply as they were held by the corporation at and before the time its charter became forfeited pursuant to this subdivision; and the corporation after its revival shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its officers and agents prior to its reinstatement, as if its charter had at all times remained in full force and effect.

IV. Any corporation seeking to revive its charter under the provisions of this chapter shall pay to the secretary of state a sum equal to all fees in arrears and due at the time its charter became forfeited pursuant to this subdivision plus a fee of \$50.

V. If a sufficient number of the last acting officers of any corporation desiring to revive its charter are not available by reason of death or unknown address, the directors of the corporation or those remaining on the board, even if only one, may elect successors to such officers. In any case where there shall be no directors of

the corporation available for the purposes aforesaid, the stockholders may elect a full board of directors as provided by the bylaws of the corporation and shall then elect such officers as are provided by law, by the certificate of incorporation or by the bylaws to carry on the business and affairs of the corporation. A special meeting of the stockholders for the purposes of electing directors may be called by any officer, director or stockholder upon notice, which notice shall state the date, place and time of the meeting and the purpose thereof.

VI. After a revival of the charter of the corporation shall have been effected (except where a special meeting of stockholders has been called in accordance with the provisions of paragraph V), the officers who signed the certificate of revival shall, jointly, forthwith call a special meeting of the stockholders of the corporation upon written notice, which notice shall state the date, place and time of the meeting and the purpose thereof. At the special meeting the stockholders shall elect a full board of directors, which board shall then elect such officers as are provided by law, by the charter or by the bylaws to carry on the business and affairs of the corporation.

VII. For the purpose of this section, the term "director" includes the governing body of a corporation which has no board of directors and the term "stockholder" includes members of a corporation entitled to vote for members of the corporation's governing body.

VIII. If the secretary of state is not satisfied that a certificate of revival is authorized by the directors or stockholders of a corporation as required by this section, he may decline to accept the certificate and the revival shall not occur.

IX. Revival of a charter under this section shall not be construed to influence any pending actions or otherwise affect any liabilities or interfere with any course of action against such corporation for the period during which the charter was repealed or revoked.

Source.

1978, 21:1. 1988, 93:8, 9.1991, 7:7, 8, 11, eff. April 16, 1991.

Amendments

—1991. Paragraph II(g): Repealed.

Paragraph III: Added "except as provided in paragraph IX" following "force and effect" at the end of the second sentence.

Paragraph IX: Added.

—1988. Paragraph I: Deleted "within 51 months of the due date of its decennial return" preceding "procure a revival" and added "provided, that if the corporation name is no longer available under the terms of RSA 292:3, the corporation shall file with its revival an amendment changing its name or a consent to use its original name" following "amendments thereto" at the end of the paragraph.

Paragraph II: In the introductory clause, deleted "executing, acknowledging" preceding "filing", deleted "and recording" thereafter, inserted "and under penalties of perjury" preceding "by an officer", made a minor change in punctuation at the end of subpar. (f) and added subpar. (g).

Paragraph VIII: Added.

RESEARCH REFERENCES

ALR.

Reinstatement of repealed, forfeited, expired, or suspended corporate charter as validating interim acts of corporation.42 A.L.R.4th 392.

Abandonment of Stock

292:31. Abandonment of Stock or Certificate.

I. Stock or membership certificates in a voluntary corporation, in the absence of bylaws which mandate rules regarding abandonment, which stock or certificates are evidenced by records available to the corporation, are presumed abandoned, and such stock or certificates shall be held by the corporation if the owner within 3 years has not:

(a) Communicated in writing with the corporation regarding the stock or a dividend, distribution or other sum payable as a result of the interest;

(b) Otherwise communicated with the corporation regarding the stock, as evidenced by a memorandum or other record on file with the corporation prepared by an employee of the corporation; or

(c) Has not exercised its ownership rights, including voting rights, regarding the stock.

II. At the expiration of a 3-year period following the failure of the owner to assert its rights under its stock, the stock is not presumed abandoned unless there have been at least 2 notices mailed to the owner's last address as reflected in the corporation's records which do not disclose this address to be inaccurate. These notices shall be sent at least 12 months apart from each other and the last of these 2 notices shall be sent 90 days prior to the termination of the 3-year period.

III. The running of the 3-year period of abandonment ceases immediately upon the occurrence of a communication by the owner to the corporation.

IV. At the time the stock is presumed abandoned under this section, any dividend, distribution, or other sum then held for, or owing to the owner as a result of the stock and not previously presumed abandoned shall be presumed abandoned.

V. The corporation holding the presumed abandoned stock shall report to the state treasurer concerning the property.

VI. The report shall be verified and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the corporation to be the owner of property of the value of \$25 or more presumed abandoned under this chapter.

(b) A description of the property and the place where it is held and where it may be

inspected by the state treasurer and any amounts owing to the corporation.

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under \$25 each may be reported in the aggregate.

(d) The date of the last transaction with the apparent owner with respect to the property.

(e) Other information the state treasurer prescribes by rules adopted pursuant to RSA 541-A relative to the administration of this section.

VII. The report shall be filed before November 1 of each year for the property presumed to be abandoned as of June 30 of that year. On written request by any corporation required to file a report, the state treasurer may postpone the reporting date.

VIII. Not more than 120 days before filing the report required by this section, the holder in possession of property abandoned and subject to custody as unclaimed property under this section shall send written notice to the apparent owner at his last known address informing him that the corporation is in possession of property subject to this section if:

(a) The corporation has in its records an address for the apparent owner which the corporation's records do not disclose to be inaccurate.

(b) The claim of the apparent owner is not barred by the statute of limitations.

(c) The property has a value of \$25 or more.

IX. Within 120 days from the termination of the 3-year abandonment period, the state treasurer, after review of the report submitted by the corporation and the finding that all procedural requirements have been performed, and if the report is deemed to be correct and the procedures are deemed to have been performed properly, the state treasurer shall declare the property abandoned, and the corporation shall have a right to retain the abandoned property as capital assets.

Source.
1991, 261:14, eff. Jan. 1, 1992.

CHAPTER 293-A

NEW HAMPSHIRE BUSINESS CORPORATION ACT

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Repeal and reenactment of chapter.

1992, 255:1, eff. Jan. 1, 1993, provided for the repeal and reenactment of RSA 293-A. Original RSA 293-A, consisting of 293-A:1—293-A:170, was derived from 1981, 557:1; 1982, 9:3, 4, 42:207; 1983, 316:1-18; 1985, 339:3-9; 1986, 115:2, 131:3, 5; 1987, 22:2, 393:1, 8; 1988, 248:2; 1989, 36:1, 256:3, 275:1, 408:66, 67, 69, 70; 1990, 3:21, 22, 90-92, 103:1, 255:11; 1991, 7:1-4, 6, 67:3, and 131:2, 4.

General Provisions**Cross References.**

Applicability of chapter to consumers' cooperative associations, see RSA 301-A:39.

Business profits tax generally, see RSA 77-A.

Dividend-paying corporations, see RSA 296.

General powers of corporations, see RSA 295.

Incorporation of building and loan associations, see RSA 393.

Incorporation of insurance companies, see RSA 401.

Incorporation of savings banks, see RSA 386-A.

Incorporation of trust companies, see RSA 392.

Incorporation of voluntary corporations, see RSA 292.

Investment trusts, see RSA 293-B.

Professional corporations, see RSA 294-A.

Stocks and other securities of common carriers by rail generally, see RSA 228:76 et seq.

NOTES TO DECISIONS**Diversity of citizenship**

A corporation first incorporated in New Hampshire and having its principal place of business there will be regarded as a citizen of that state for the purpose of removal of causes to a federal court, although it was also incorporated in another state. *Farfield v. Great Falls Mfg. Co.*, 175 F. 305, 1910 U.S. App. LEXIS 5221 (C.C.D.N.H. 1910). (Decided under prior law.)

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article, "Assisting Clients in Choosing the Legal Form of Their Business: A Three-Step Method," see 33 N.H.B.J.321 (1992).

For article, "Coming to Terms with New Hampshire's New Business Corporation Act," see 33 N.H.B.J.13 (1992).

Part A**Short Title and Reservation of Power****293-A:1.01. Short Title.**

This chapter shall be known and may be cited as the "New Hampshire Business Corporation Act."

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:1.02. Reservation of Power to Amend or Repeal.

The general court has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

Source.
1992, 255:1, eff. Jan. 1, 1993.

Part B
Filing Documents

293-A:1.20. Filing Requirements.

(a) A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) All required documents shall be filed in the office of the secretary of state.

(c) The document shall contain the information required by this chapter. It may contain other information as well.

(d) The document shall be typewritten or printed.

(e) The document shall be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) Except as specifically provided in other sections of this chapter, the document shall be executed:

(1) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers; or

(2) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:

(1) The corporate seal.

(2) An attestation by the secretary or an assistant secretary.

(3) An acknowledgment, verification, or proof.

(h) If the secretary of state has prescribed a mandatory form for the document under RSA 293-A:1.21, the document shall be in or on the prescribed form.

(i) The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by one exact or conformed copy, except as provided in RSA 293-A:5.03 and 293-

A:15.09, the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or other law. Documents filed electronically need not be accompanied by an exact or conformed copy, but must be accompanied by the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or any similar chapter. Annual reports delivered for filing pursuant to RSA 293-A:16.22 need not be accompanied by an exact or conformed copy.

Source.
1992, 255:1, eff. Jan. 1, 1993. 1998, 106:1, eff. Aug. 1, 1998. 2004, 248:3, eff. July 1, 2004.

Amendments
—2004. Subsection (i): Added the second sentence.

—1998. Subsection (f): Added “Except as specifically provided in other sections of this chapter” at the beginning of the introductory paragraph.

293-A:1.21. Forms.

(a) The secretary of state may prescribe and furnish on request forms for:

(1) An application for a certificate of existence.

(2) A foreign corporation’s application for a certificate of authority to transact business in this state.

(3) A foreign corporation’s application for a certificate of withdrawal.

(4) The annual report.

If the secretary of state so requires, use of these forms is mandatory.

(b) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

Source.
1992, 255:1, eff. Jan. 1, 1993.

293-A:1.22. Filing, Service, Copying, and Special Fees.

(a) The secretary of state shall collect the following fees for:

(1) Articles of incorporation	\$ 50
(2) Amendment of articles of incorporation	\$ 35
(3) Restatement of articles of incorporation with amendment of articles	\$ 35
(4) Articles or certificate of merger or articles of share exchange	\$ 35
(5) Articles of dissolution	\$ 35
(6) Articles of revocation of dissolution	\$ 35
(7) Application for reinstatement following administrative dissolution	\$ 135
(8) Application for certificate of authority	\$ 5
(9) Application for amended certificate of authority	\$ 35
(10) Application for certificate of withdrawal	\$ 35

(11) Articles of correction	\$ 35
(12) Late filing	\$ 50
(13) Late reinstatement fee	\$ 500
(14) Restatement of articles of incorporation without amendment	\$ 35
(b) The secretary of state shall collect the following fees for:	
(1) Application for reserved name	\$ 15
(2) Notice of transfer of reserved name	\$ 15
(3) Application for registered name	\$ 25
(4) Application for renewal of registered name	\$ 25
(5) Statement of change of registered agent or registered office, or both	\$ 15
(6) Agent's statement of resignation	No fee
(7) Certificate of judicial dissolution	No fee
(8) Annual report	\$ 100
(9) Application for certificate of existence or authorization	\$ 5
(10) Application for certificate of existence or authorization in long form	\$ 10
(11) Any other document required or permitted to be filed by this chapter	\$ 15
(c) The secretary of state shall collect a fee of \$25 each time process is served on him or her under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.	
(d) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:	
(1) \$1 a page for copying; and	
(2) \$5 for the certificate.	
(e) The secretary of state may collect fees for certain services, including but not limited to:	
(1) Expedited service or filing requests.	
(2) Direct access to corporations data.	
(3) Computer tapes.	
(4) Microfiche.	
(5) Customized lists and reports.	
(6) Corporate information via telephone-based systems or facsimile machine.	
(7) Other information services.	
(8) Electronic copies of data and/or images.	
(f) The secretary of state may establish and collect such fees for the special services listed in subsection (e) as determined from time to time by the secretary of state.	

Source.

1992, 255:1, 1993, 344:1, eff. July 1, 1993. 1997, 120:1, eff. Aug. 8, 1997. 1999, 189:1, eff. Sept. 4, 1999. 2004, 248:4, eff. July 1, 2004. 2006, 81:1, eff. May 5, 2006. 2006, 316:2, eff. July 1, 2006.

Amendments

—2006. Subsection (a)(12): Chapter 81 substituted “\$50” for “\$25 per month”.

Subsection (a)(14): Added by ch. 316.

—2004. Subsection (a): Substituted “\$50” for “\$35” in subpars. (1) and (8) and “\$25 per month” for “\$50” in subpar. (12).

Subsection (b): Deleted the former subpar. (8) and redesignated former subpars. (9)-(12) as present subpars. (8)-(11)

Subsection (c): Inserted “or her” following “him” in the first sentence and substituted “the party” for “he” preceding “prevails” in the second sentence.

Subsection (e)(8): Added.

—1999. Paragraph (a)(13): Added.

—1997. Paragraph (a)(4): Inserted “or certificate” preceding “of merger” and “articles of” preceding “share”.

—1993. Subsection (b): Deleted subpar. (1) and redesignated former subpars. (2)-(13) as subpars. (1)-(12), respectively.

Reimbursement to Administratively Dissolved Entities.

2006, 81:5 provides: “The secretary of state shall reimburse any business entity that received a notice of administrative dissolution dated September 1, 2005 for any fee paid for a reinstatement application and any late fees paid in excess of \$50.”

Reimbursement of Late Fees.

2006, 81:6 provides: “The secretary of state shall reimburse any business entity, not included in section 5 of this act, late fees in excess of \$50 on annual returns paid by the business entity from May 1, 2005 through June 30, 2006.”

293-A:1.23. Effective Time and Date of Document.

(a) Except as provided in subsections (b) and (c) and RSA 293-A:1.24(c), a document accepted for filing is effective:

(1) At the close of business on the date it is filed, as evidenced by the secretary of state's date endorsement of the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

(c) A document filed electronically shall be effective upon the date and time of acceptance by the secretary of state corporate database and application or as specified pursuant to subparagraph (b).

Source.

1992, 255:1, eff. Jan. 1, 1993. 2004, 248:5, eff. July 1, 2004.

Amendments

—2004. Subsection (a): Substituted “subsections (b) and (c)” for “subsection (b)”.

Subsection (c): Added.

293-A:1.24. Correcting Filed Document.

(a) A domestic or foreign corporation may correct a document filed by the secretary of state if the document (1) contains an incorrect statement or (2) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that
(i) Describe the document (including its filing date) or attach a copy of it to the articles;

(ii) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective;

(iii) Correct the incorrect statement or defective execution; and

(2) By delivering the articles to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:1.25. Filing Duty of Secretary of State.

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of RSA 293-A:1.20, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed", together with his name and official title and the date of receipt, on both the original and the document copy. After filing a document, except as provided in RSA 293-A:5.03 and RSA 293-A:15.10, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative.

(c) If the secretary of state refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within 30 days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The secretary of state's duty to file documents under this section is administrative. His filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(e) The secretary of state and those acting on his or her behalf shall incur no liability, either personally or on behalf of the state of New Hampshire, as a result of defects or inconsistencies in the documents recorded by them under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349 or as a result of negligent acts or omissions in the handling and recording of those documents.

Source.

1992, 255:1, eff. Jan. 1, 1993. 2004, 248:6, eff. July 1, 2004.

Amendments

—2004. Subsection (e): Inserted "or her" following "his" and substituted "RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349" for "293, 293-A and 296".

293-A:1.26. Appeal From Secretary of State's Refusal to File Document.

(a) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal within 30 days after the return of the document to the superior court of the county where the corporation's registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

(b) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:1.27. Evidentiary Effect of Copy of Filed Document.

A certificate attached or affixed to a copy of a document filed by the secretary of state, bearing his signature and the seal of this state (both of which may be in facsimile) is conclusive evidence that the original document is on file with the secretary of state.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:1.28. Certificate of Existence.

(a) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.

(2) That:

(i) The domestic corporation is duly incorporated under the law of this state, and the date of its incorporation; or

(ii) The foreign corporation is authorized to transact business in this state.

(3) That all fees, taxes, and penalties owed to this state have been paid, if:

(i) Payment is reflected in the records of the secretary of state; and

(ii) Nonpayment affects the existence or authorization of the domestic or foreign corporation.

(4) That its most recent annual report has been delivered to the secretary of state, if required.

(5) That articles of dissolution have not been filed.

(6) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:1.29. Penalty for Signing False Document.

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

(b) An offense under this section is a misdemeanor.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Classification of crimes, see RSA 625:9.

Sentences, see RSA 651.

Part C

Secretary of State

293-A:1.30. Powers.

The secretary of state has the power reasonably necessary to perform the duties required of him by this chapter.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:1.31-293-A:1.34.

[Repealed 1993, 350:41, VI, eff. July 1, 1993.]

Former section(s).

Former RSA 293-A:1.31, which was derived from 1992, 255:1 and 1993, 344:2, related to license fees payable by domestic corporations.

Former RSA 293-A:1.32, which was derived from 1992, 255:1, related to license fees payable by foreign corporations.

Former RSA 293-A:1.33, which was derived from 1992, 255:1, related to maintenance fees payable by domestic corporations.

Former RSA 293-A:1.34, which was derived from 1992, 255:1 and 1993, 344:3, related to maintenance fees payable by foreign corporations.

Severability of enactment.

1993, 350 was subject to a severability clause. See 1993, 350:40.

Collection of fees following repeal.

1993, 350:34, eff. July 1, 1993, provided: "Nothing in this act [which repealed RSA 293-A:1.31-293-A:1.34 and RSA 293-A:1.37(a)] shall be construed to excuse any fee obligations or liabilities accruing under RSA 293-A as amended prior to and up to the date of their repeal [July 1, 1993]. The secretary of state shall retain full authority to institute any authorized administrative actions and any other proceedings to require payment of and to collect said fees and penalties and interest where applicable, within the applicable statute of limitations."

293-A:1.35. Assessment and Collection of Annual Fees.

It shall be the duty of the secretary of state to collect all filing fees and penalties imposed by, or assessed in accordance with, this chapter.

Source.

1992, 255:1. 1993, 350:25, eff. July 1, 1993.

Amendments

—1993. Substituted "filing" for "annual franchise" preceding "fees".

Severability

—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

293-A:1.36. Penalties Imposed.

Each corporation, domestic or foreign, that fails or refuses to file its annual report or to pay all associated fees related thereto, or both, for any year on or before April 1 shall be subject to an additional fee as set out in RSA 293-A:1.22(a)(12).

Source.

1992, 255:1, eff. Jan. 1, 1993. 2004, 248:63, eff. July 1, 2004.

Amendments

—2004. Substituted "on or before April 1" for "by April 15".

293-A:1.37. Administration.

(a) [Repealed.]

(b) The state treasurer shall pay the expenses of administering this chapter, RSA 382-A:9, and other information technology costs of the secretary of state out of any money in the treasury not otherwise appropriated until the fees collected pursuant to RSA 293-A:1.22(a), RSA 382-A:9, and other information technology services have been received by him. Thereafter he shall pay the expenses of administering this chapter, RSA 382-A:9, and other information technology costs of the secretary of state out of the fees collected under RSA 293-A:1.22(a) and RSA 382-A:9-411(d) and shall reimburse the treasury for previous expenses paid by him. The governor is authorized to draw his warrant for the sums authorized by this section out of any money in the treasury not otherwise appropriated.

(c) Fees collected by the secretary of state pursuant to RSA 293-A:1.22(e) and RSA 382-A:9-411 shall be deposited in the same manner

as fees collected pursuant to RSA 293-A:1.22(a) and shall be available to the secretary of state to administer the provisions of this chapter and RSA 382-A:9 in the same manner as provided in subsection (b) of this section.

Source.

1992, 255:1. 1993, 350:41, VII, eff. July 1, 1993. 1998, 382:12, eff. Aug. 25, 1998.

Amendments

—1998. Paragraph (b): Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph (c): Inserted “and RSA 382-A:9-411” and “and RSA 382-A:9”.

—1993. Subsection (a): Repealed.

Severability

—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

Collection of fees following repeal by 1993, 350:41.

1993, 350:34, eff. July 1, 1993, provided: “Nothing in this act [which repealed RSA 293-A:1.31-293-A:1.34 and RSA 293-A:1.37(a)] shall be construed to excuse any fee obligations or liabilities accruing under RSA 293-A as amended prior to and up to the date of their repeal [July 1, 1993]. The secretary of state shall retain full authority to institute any authorized administrative actions and any other proceedings to require payment of and to collect said fees and penalties and interest where applicable, within the applicable statute of limitations.”

293-A:1.38. Interrogatories by Secretary of State; Penalties.

(a) The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director of the corporation, interrogatories as may be reasonably necessary and proper to enable him to ascertain whether the corporation has complied with all the provisions of this chapter applicable to the corporation. Interrogatories shall be answered within 30 days after the mailing, or within such additional time as shall be fixed by the secretary of state. The answers to the interrogatories shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by its president, vice president, secretary or assistant secretary. The secretary of state shall not need to record any document to which the interrogatories relate until the interrogatories are answered as provided in this section, and then not if the answers to the interrogatories disclose that the document is not in conformity with the provisions of this chapter. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers to interrogatories which disclose a violation of any of the provisions of this chapter.

(b) The attorney general may petition the superior court of the county in which the individual to whom interrogatories are directed

resides, or in which the corporation has its registered office, or of Hillsborough county if the individual or corporation does not reside in or maintain a registered office in this state to seek enforcement of the interrogatories. To the extent that they are not in conflict with this section, all rules of the superior court relating to interrogatories shall be applicable to the interrogatories propounded by the secretary of state pursuant to this section.

(c) Interrogatories propounded by the secretary of state and the answers to the interrogatories shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained from the answers except insofar as his official duty may require it to be made public or in the event the interrogatories or their answers are required for evidence in any criminal proceedings or in any other action by the state.

(d) Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to the officer or director to be false in any material respect, shall be guilty of a misdemeanor.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

Part D

Definitions

293-A:1.40. Definitions.

In this chapter:

(1) “Articles of incorporation” include amended and restated articles of incorporation and articles of merger.

(2) “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) “Conspicuous” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(5) “Deliver” includes mail.

(6) “Distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a

corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Effective date of notice" is defined in RSA 293-A:1.41.

(8) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

(9) "Entity" includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, limited liability company, limited liability partnership, New Hampshire investment trust, limited partnership, cooperative, and 2 or more persons having a joint or common economic interest; and state, United States, and foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Governmental subdivision" includes agency, county, district, and municipality.

(12) "Includes" denotes a partial definition.

(13) "Individual" includes the estate of an incompetent or deceased individual.

(14) "Means" denotes an exhaustive definition.

(15) "Notice" is defined in RSA 293-A:1.41.

(16) "Person" includes individual and entity.

(17) "Principal office" means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(18) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(19) "Record date" means the date on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RSA 293-A:8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(21) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(22) "Shares" means the units into which the proprietary interests in a corporation are divided.

(23) "State", when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental

subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(24) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(25) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

(26) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

Source.

1992, 255:1, eff. Jan. 1, 1993. 2004, 248:7, eff. July 1, 2004.

Amendments

—2004. Paragraph (9): Inserted "limited liability company, limited liability partnership, New Hampshire investment trust, limited partnership, cooperative" preceding "and 2 or more persons".

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Shareholders' Inspection Rights: Current Law and Proposed Legislation," see 44 N.H.B.J. 20 (Sept. 2003).

293-A:1.41. Notice.

(a) Notice under this chapter shall be in writing, unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(d) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received.

(2) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:1.42. Number of Shareholders.

For the purposes of this chapter:

(a) The following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

(1) Three or fewer co-owners.

(2) A corporation, partnership, trust, estate, or other entity.

(3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) Shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Incorporation

NOTES TO DECISIONS

Seals

A corporation is bound by a deed although the seal is not that adopted by the corporation. *Tenney v. East Warren Lumber Co.*, 43 N.H. 343, 1861 N.H. LEXIS 85 (1861). (Decided under prior law.)

293-A:2.01. Incorporators.

One or more persons may act as the incorporator or incorporators and incorporate a corporation by delivering articles of incorporation and the certification required by RSA 421-B:13, I-a(b) to the secretary of state for filing.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:2.02. Articles of Incorporation.

(a) The articles of incorporation shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of RSA 293-A:4.01.

(2) The number of shares the corporation is authorized to issue.

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office.

(4) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors.

(2) Provisions not inconsistent with law regarding:

(i) The purposes for which the corporation is organized.

(ii) Managing the business and regulating the powers of the corporation, its board of directors, and shareholders.

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders.

(iv) A par value for authorized shares or classes of shares.

(v) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

(3) Any provision that under this chapter is required or permitted to be set forth in the bylaws.

(4) A provision eliminating or limiting the liability of a director, an officer, or both, to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director or an officer, except liability for:

(i) The amount of a financial benefit received by a director or an officer to which he is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders;

(iii) A violation of RSA 293-A:8.33; or

(iv) An intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

Source.

1992, 255:1, 1994, 117:1, eff. July 10, 1994.

Amendments

—1994. Subparagraph (b)(4): Inserted "or an officer" preceding "except liability" in the introductory paragraph, redesignated subpars. (A)-(D) as subpars. (i)-(iv) and inserted "or an officer" following "director" in subpar. (i).

Cross References.

Amendment of articles of incorporation, see RSA 293-A:10.01 et seq.

Application for certificate of authority, see RSA 293-A:15.03.

Filing, service, copying and special fees, see RSA 293-A:1.22.

293-A:2.03. Incorporation.

(a) Unless an effective time or delayed effective time and date are specified in accordance with RSA 293-A:1.23, the corporate existence begins at the close of business on the date when the articles of incorporation are filed.

(b) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Source.

1992, 255:1. 1993, 344:4, eff. July 1, 1993. 1995, 201:2, eff. Aug. 11, 1995.

Amendments

—1995. Subsection (a): Substituted “an effective time or delayed effective time and date are” for “a delayed effective date is” preceding “specified” and inserted “in accordance with RSA 293-A:1.23” thereafter.

—1993. Subsection (a): Inserted “at the close of business on the date” following “begins”.

NOTES TO DECISIONS**Notice of incorporation**

Under this section the existence of a corporation begins when its record of organization is deposited in the office of the secretary of state and the required fee paid; however, what will be deemed sufficient notice of incorporation so as to affect the rights of a creditor depends on the circumstances. *Tancreti v. Mandinach*, 100 N.H. 451, 129 A.2d 669, 1957 N.H. LEXIS 74 (1957). (Decided under prior law.)

293-A:2.04. Liability for Preincorporation Transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:2.05. Organization of Corporation.

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting.

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organiza-

tional meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS**Applicability**

The provision of this section governing adoption of corporate bylaws by the board of directors is inapplicable to cooperative associations. *Whitman v. New Hampshire Elec. Coop.*, 123 N.H. 111, 459 A.2d 224, 1983 N.H. LEXIS 238 (1983). (Decided under prior law.)

293-A:2.06. Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS**Common law**

Provision of paragraph XII of this section permitting corporations to adopt bylaws not repugnant to the laws of the state affirms the general rule of the common law. *McCool v. New Hampshire Elec. Coop.*, 122 N.H. 113, 442 A.2d 988, 1982 N.H. LEXIS 307 (1982). (Decided under prior law.)

The provision that corporations may adopt bylaws not repugnant to the laws of the state affirms the general rule of the common law. *Jones v. Concord & M.R.R.*, 67 N.H. 119, 38 A. 120, 1891 N.H. LEXIS 20 (1892). (Decided under prior law.)

293-A:2.07. Emergency Bylaws.

(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(1) Procedures for calling a meeting of the board of directors.

(2) Quorum requirements for the meeting.

(3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(1) Binds the corporation.

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Purposes and Powers of Corporations

293-A:3.01. Purposes.

(a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) Notwithstanding the provisions of subsection (a), a corporation may not be organized under this chapter for the purpose of carrying on the business of banking, the construction and maintenance of railroads, the business of making contracts for the payment of money at a fixed date or upon the happening of some contingency, or the business of a trust, surety, indemnity or safe deposit company; provided, however, that if the commissioner of the department of transportation enters an order finding that it shall be in the public good and subject to such terms and conditions as he may prescribe in the public interest, a corporation may be formed pursuant to the provisions of this chapter to acquire, maintain and operate any existing line or railroad or street railway within this state.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:3.02. General Powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

(1) To sue and be sued, complain and defend in its corporate name.

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

(3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation.

(4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

(6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in or with shares or other interests in, or obligations of, any other entity.

(7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligation by mortgage or pledge of any of its property, franchises, or income.

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

(9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

(10) To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

(11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit.

(12) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(14) To transact any lawful business that will aid governmental policy.

(15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Emergency powers, see RSA 293-A:3.03.

Powers of professional corporations, see RSA 294-A:4.

Ultra vires, see RSA 293-A:3.04.

NOTES TO DECISIONS

1. Borrowing
2. Notes
3. Foreign corporations
4. Acts of agents
5. Trustee powers

1. Borrowing

The power of a corporation to borrow money is not restricted by a charter provision limiting its capital stock, prescribing a limit for the assessment of shares and providing that if a greater amount of money should be necessary it should be raised by creating new shares. *Richards v. Merri-mack & C. R. R.R.*, 44 N.H. 127, 1862 N.H. LEXIS 137 (1862). (Decided under prior law.)

2. Notes

Notes of a corporation signed by its officers acting within the scope of their authority are binding upon it, provided they are made or given for any of the legitimate purposes for which it was incorporated. *Richards v. Merrimack & C. R. R.R.*, 44 N.H. 127, 1862 N.H. LEXIS 137 (1862). (Decided under prior law.)

3. Foreign corporations

A corporation created by the laws of another state has power to take and hold lands in New Hampshire. *Lumbard v. Aldrich*, 8 N.H. 31, 1835 N.H. LEXIS 5 (1835). (Decided under prior law.)

4. Acts of agents

A corporation cannot ratify a contract made by its agent which it could not lawfully authorize. *Downing v. Mount Wash. Rd. Co.*, 40 N.H. 230, 1860 N.H. LEXIS 140 (1860). (Decided under prior law.)

A conveyance in the name of a corporation by its agent is sufficient. *Flint v. Clinton Co.*, 12 N.H. 430, 1841 N.H. LEXIS 63 (1841). (Decided under prior law.)

Where a deed is signed by the agent of a corporation and the corporate seal is affixed thereto, it may be presumed that the agent was duly authorized to make the conveyance. *Flint v. Clinton Co.*, 12 N.H. 430, 1841 N.H. LEXIS 63 (1841). (Decided under prior law.)

5. Trustee powers

A corporation cannot be a trustee for purposes foreign to its institution. *Trustees of S. Newmarket Methodist Seminary v. Peaslee*, 15 N.H. 317, 1844 N.H. LEXIS 134 (1844). (Decided under prior law.)

293-A:3.03. Emergency Powers.

(a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio.

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:3.04. Ultra Vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid because the corporation was without capacity or power to do the act or to make or receive the conveyance or transfer, but the lack of capacity or power may be asserted:

(a) In a proceeding by a shareholder against a corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of the contract, and in so doing may allow to the corporation or to other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract. Anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former directors or officers of the corporation.

(c) In a proceeding by the attorney general, as provided in this chapter to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Name**293-A:4.01. Corporate Name.**

(a) A corporate name shall:

(1) Contain the word "corporation," "incorporated," or "limited" or the abbreviation "corp.," "inc.," or "ltd.," or words or abbreviations of like import in another language.

(2) Not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RSA 293-A:3.01 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(1) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA

293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(3) The fictitious name of another foreign corporation authorized to transact business in this state.

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(5) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in subsection (b) of this section, as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(1) The holder or holders of the name as described in subsection (b) gives written consent to use the name that is not distinguishable from or likely to be confused with or mistaken for the name of the applying corporation; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(2) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying corporation; or

(3) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user corporation:

(1) Has merged with the other entity;

(2) Has been formed by reorganization of the other entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other entity.

(e) This chapter does not control the use of fictitious names.

(f) Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a domestic corporation under the same name as the trade name.

(g) The secretary of state and those acting on his or her behalf shall incur no liability, either personally or on behalf of the state of New Hampshire, as a result of negligent acts or omissions in the reservation or registration of any name under this chapter or any other name registration or reservation statute, including but not limited to RSA 349, or the handling and recording of documents pertaining to such reservation or registration.

Source.

1992, 255:1. 1993, 344:5, eff. July 1, 1993. 1999, 293:2, eff. July 16, 1999. 2004, 248:8, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

—1999. Subsection (b): Rewrote subpar. (2), deleted former subpars. (5)-(8), and redesignated former subpars. (9) and (10) as present subpar. (5) and (6).

—1993. Subsection (b): Rewritten to the extent that a detailed comparison would be impracticable.

Subsection (c): Inserted "the" following "authorize" in the second sentence of the introductory paragraph, added a new subpar. (1) and redesignated former subpars. (1) and (2) as subpars. (2) and (3), respectively.

Subsection (f): Added.

Cross References.

Application of section to insurance corporations, see RSA 401:15.

Building and loan association names, see RSA 393:3.

Corporate names of foreign corporations, see RSA 293-A:15.06.

Corporate names of professional corporations, see RSA 294-A:7.

Filing, service, copying and special fees, see RSA 293-A:1.22.

Names of voluntary corporations and associations, see RSA 292:3.

Regulation of investment trust names, see RSA 293-B:16.

Reservation of exclusive right to use of corporate name, see RSA 293-A:4.02.

293-A:4.02. Reserved Name.

(a) The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this chapter;

(2) Any domestic corporation intending to change its name;

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state;

(4) Any foreign corporation authorized to transact business in this state and intending to change its name; or

(5) Any person intending to organize a foreign corporation and intending to have the corporation make application for a certificate of authority to transact business in this state.

(b) The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the name for the exclusive use of the applicant for a period of 120 days.

(c) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Reservation of names by insurance companies, see RSA 401:16.

NOTES TO DECISIONS

1. Rights of foreign corporations
2. Construction with other law

1. Rights of foreign corporations

A foreign corporation which was the first in the field is entitled to enjoy the use of the same name by a New Hampshire corporation; and its right to do so is not affected by the fact that the foreign corporation is not licensed to do business in the state. *Western Auto Supply Co. v. Western Auto Supply Co.*, 13 F. Supp. 525, 1936 U.S. Dist. LEXIS 1488 (D.N.H. 1936). (Decided under prior law.)

2. Construction with other law

Where a former employee registered a trade name similar to his former employer's registration under RSA 401:16 with the insurance commissioner, the court held that RSA 401:16 and RSA 293-A:4.02 were in conflict; accordingly, the secretary of state could not register a name that was similar to or likely to be confused with a name reserved under RSA 401:16 and the insurance company had the exclusive right to use its trade name. *Marceau v. Concord Heritage Life Ins. Co.*, 149 N.H. 216, 818 A.2d 1264, 2003 N.H. LEXIS 28 (2003).

293-A:4.03. Registered Name.

(a) Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this chapter, provided its corporation name is available as required by RSA 293-A:4.01.

(b) Registration shall be made by:

(1) Filing with the secretary of state:

(i) An application for registration executed by an officer of the corporation, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(ii) A certificate setting forth that the corporation is in good standing under the laws of the state or territory in which it is organized, executed by the secretary of state of the state or territory or by any other official who has custody of the records pertaining to corporations; and

(2) Paying to the secretary of state the permitted registration fee.

(c) Registration shall be effective until the close of the calendar year in which the application for registration is filed.

Source.

1992, 255:1.1993, 344:6, 7, eff. July 1, 1993.

Amendments

—1993. Subsection (a): Substituted "corporation name is available as required by RSA 293-A:4.01" for "corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this chapter, or the name of an agency or instrumentality of the United States or this state or a subdivision thereof, or the name of a proprietorship, partnership or an association registered as a trade name in this state" following "provided its".

Subparagraph (b)(1)(i): Deleted "by the corporation" following "executed".

Cross References.

Filing, service, copying, and special fees, see RSA 293-A:1.22.

293-A:4.04. Renewal of Registered Name.

(a) A corporation which has in effect a registration of its corporate name may renew the registration from year to year by:

(1) Annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration; and

(2) By paying the prescribed fee.

(b) A renewal application may be filed between October 1 and December 31 of each year, and shall extend the registration for the following calendar year.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Fee for filing applications. see RSA 293-A:1.22.

Office and Agent

293-A:5.01. Registered Office and Registered Agent.

Each corporation shall continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business.

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office; or

(ii) A corporation organized or authorized under RSA 292, RSA 293-A, or 294-A whose business office is identical with the registered office; or

(iii) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or

(iv) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

Source.

1992, 255:1, eff. Jan. 1, 1993. 2004, 248:9, eff. July 1, 2004.

Amendments

—2004. Paragraph (2): Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Failure to appoint and maintain registered agent, see RSA 293-A:14.20.

Filing, service, copying and special fees, see RSA 293-A:1.22.

Registered office and agent of foreign corporations, see RSA 293-A:15.07.

Registered office and agent of insurance corporations, see RSA 401:12.

Service of process on registered agent, see RSA 293-A:5.04.

293-A:5.02. Change of Registered Office or Registered Agent.

(a) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) The name of the corporation.

(2) The street address of its current registered office.

(3) If the current registered office is to be changed, the street address of the new registered office.

(4) The name of its current registered agent.

(5) If the current registered agent is to be changed, the name of the new registered agent.

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

Source.

1992, 255:1, 1993, 344:8, eff. July 1, 1993.

Amendments

—1993. Paragraph (a)(4): Substituted “agent” for “office” following “registered”.

Cross References.

Filing, service, copying and special fees, see RSA 293-A:1.22.

293-A:5.03. Resignation of Registered Agent.

(a) A registered agent may resign his agency appointment by signing and delivering to the secretary of state for filing the signed original and one exact or conformed copy of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the secretary of state shall mail the copy to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Filing, service, copying and special fees, see RSA 293-A:1.22.

293-A:5.04. Service on Corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Filing, service, copying and special fees, see RSA 293-A:1.22.

Service on foreign corporation, see RSA 293-A:15.10.

Shares and Distributions**Part A****Shares****293-A:6.01. Authorized Shares.**

(a) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by RSA 293-A:6.02.

(b) The articles of incorporation must authorize:

(1) One or more classes of shares that together have unlimited voting rights; and

(2) One or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes of shares that:

(1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter.

(2) Are redeemable or convertible as specified in the articles of incorporation:

(i) At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event.

(ii) For cash, indebtedness, securities, or other property.

(iii) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

(4) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(d) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (c) is not exhaustive.

Source.

1992, 255:1, eff. Jan. 1, 1993.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Blank Stock Issuance Under the Business Corporation Act: How Clean is the Slate?" see 31 N.H.B.J.111 (1990). (Discussing prior law.)

293-A:6.02. Terms of Class or Series Determined by Board of Directors.

(a) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in RSA 293-A:6.01, of:

(1) Any class of shares before the issuance of any shares of that class; or

(2) One or more series within a class before the issuance of any shares of that series.

(b) Each series of a class must be given a distinguishing designation.

(c) All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(d) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth:

(1) The name of the corporation;

(2) The text of the amendment determining the terms of the class or series of shares.

(3) The date it was adopted.

(4) A statement that the amendment was duly adopted by the board of directors.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:6.03. Issued and Outstanding Shares.

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) and to RSA 293-A:6.40.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:6.04. Fractional Shares.

(a) A corporation may:

(1) Issue fractions of a share or pay in money the value of fractions of a share.

(2) Arrange for disposition of fractional shares by the shareholders.

(3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by RSA 293-A:6.25(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(1) That the scrip will become void if not exchanged for full shares before a specified date.

(2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part B**Issuance of Shares****293-A:6.20. Subscription for Shares Before Incorporation.**

(a) A subscription for shares entered into before incorporation is irrevocable for 6 months, unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to RSA 293-A:6.21.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Liability of shareholders, see RSA 293-A:6.22.

293-A:6.21. Issuance of Shares.

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive

insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or in part.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

1. Purpose
2. Overvaluation
3. Failure to pay

1. Purpose

"Good faith" rule embodied in this section is meant to protect stockholders and creditors from depletion of the corporation's capital by preventing the corporation from issuing stock without payment in return. *Flags I, Inc. v. Kennedy*, 131 N.H. 412, 553 A.2d 778, 1989 N.H. LEXIS 7 (1989). (Decided under prior law.)

2. Overvaluation

"Good faith" rule of valuation embodied in this section protects both the directors and the stockholders who received the stock in question by prohibiting suits to recover stock based on the contention that the directors overvalued the consideration given; the rule allows such suits only where the charge is that the directors' alleged overvaluation was fraudulent. *Flags I, Inc. v. Kennedy*, 131 N.H. 412, 553 A.2d 778, 1989 N.H. LEXIS 7 (1989). (Decided under prior law.)

3. Failure to pay

"Good faith" rule embodied in this section does not provide a shield from an action by the corporation for rescission or damages to the stockholder who has failed to pay the consideration he promised. *Flags I, Inc. v. Kennedy*, 131 N.H. 412, 553 A.2d 778, 1989 N.H. LEXIS 7 (1989). (Decided under prior law.)

Superior court improperly dismissed claims by corporation seeking return of stock issued to the defendant on basis of the "good faith" rule embodied in this section, where corporation alleged that it never received anything of value in exchange for the stock because representations defendant gave in exchange for the stock were materially false and promised actions by defendant were never performed. *Flags I, Inc. v. Kennedy*, 131 N.H. 412, 553 A.2d 778, 1989 N.H. LEXIS 7 (1989). (Decided under prior law.)

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article "Blank Stock Issuance Under the Business Corporation Act: How Clean is the Slate?" see 31 N.H.B.J.111 (1990). (Discussing prior law.)

293-A:6.22. Liability of Shareholders.

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under RSA 293-A:6.21 or specified in the subscription agreement under RSA 293-A:6.20.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS**Cited:**

Cited in *Bianco Professional Ass'n v. Home Ins. Co.*, 144 N.H. 288, 740 A.2d 1051, 1999 N.H. LEXIS 110 (1999).

293-A:6.23. Share Dividends.

(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(1) The articles of incorporation so authorize.

(2) A majority of the votes entitled to be cast by the class or series to be issued approve the issue.

(3) There are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:6.24. Share Options.

A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:6.25. Form and Content of Certificates.

(a) Shares may, but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) The name of the issuing corporation and that it is organized under the law of this state.

(2) The name of the person to whom issued.

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate:

(1) Must be signed, either manually or in facsimile, by 2 officers designated in the bylaws or by the board of directors; and

(2) May bear the corporate seal or its facsimile.

(e) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:6.26. Shares Without Certificates.

(a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares or any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates, until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by RSA 293-A:6.25(b) and (c), and, if applicable, RSA 293-A:6.27.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:6.27. Restriction on Transfer of Shares and Other Securities.

(a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted, unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by RSA 293-A:6.26(b). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) To maintain the corporation's status when it is dependent on the number or identity of its shareholders.

(2) To preserve exemptions under federal or state securities law.

(3) For any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(1) Obligate the shareholder first to offer the corporation or other persons separately, consecutively, or simultaneously an opportunity to acquire the restricted shares.

(2) Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares.

(3) Require the corporation, the holders of any class of its shares, or any other person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable.

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Source.

1992, 255:1. 1994, 117:2, eff. July 10, 1994.

Amendments

—1994. Subparagraph (c)(1): Substituted "identity" for "identify" following "number or".

293-A:6.28. Expense of Issue.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or

reorganizing the corporation, from the consideration received for shares.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part C**Subsequent Acquisition of Shares by Shareholders and Corporation****293-A:6.30. Shareholder's Preemptive Rights.**

(a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(2) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) There is no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates.

(ii) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates.

(iii) Shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation.

(iv) Shares sold otherwise than for money.

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(5) Holders of shares of any class with general voting rights, but without preferential rights to distributions or assets, have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets, unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:6.31. Corporation's Acquisition of its Own Shares.

(a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(c) The board of directors may adopt articles of amendment under this section without shareholder action and deliver them to the secretary of state for filing. The articles must set forth:

- (1) The name of the corporation.
- (2) The reduction in the number of authorized shares, itemized by class and series.
- (3) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part D

Distributions

293-A:6.40. Distributions to Shareholders.

(a) A board of directors may authorize, and the corporation may make, distributions to its shareholders, subject to restriction by the articles of incorporation and the limitation in subsection (c).

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) The corporation would not be able to pay its debts as they become due in the usual course of business.

(2) The corporation's total assets would be less than the sum of its total liabilities plus,

unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g), the effect of a distribution under subsection (c) is measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

- (i) The date money or other property is transferred or debt incurred by the corporation; or
- (ii) The date the shareholder ceases to be a shareholder with respect to the acquired shares.

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed.

(3) In all other cases, as of:

- (i) The date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or
- (ii) The date the payment is made if it occurs more than 120 days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Payment by insolvent corporation

Bankruptcy court denied motions to dismiss a claim which a Committee of Unsecured Creditors filed against a corporation's former officers and directors, seeking recovery of dividends the officers and directors authorized within the two-

year period that preceded the date the corporation declared bankruptcy. The Committee stated a claim for recovery of those dividends by alleging that the officers and directors violated RSA 293-A:6.40 because they authorized payment of dividends when they knew the corporation was insolvent. Official Comm. of Unsecured Creditors v. Foss (In re Felt Mfg. Co.), 371 B.R. 589, 2007 Bankr. LEXIS 2569 (July 27, 2007).

Shareholders

Part A

Meetings

293-A:7.01. Annual Meeting.

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Shareholders' list for meeting, see RSA 293-A:7.20.

Waiver of notice, see RSA 293-A:7.06.

NOTES TO DECISIONS

Cited:

Cited in *In re Unnamed Attorney*, 138 N.H. 729, 645 A.2d 69, 1994 N.H. LEXIS 93 (1994).

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Shareholders' Inspection Rights: Current Law and Proposed Legislation," see 44 N.H.B.J. 20 (Sept. 2003).

293-A:7.02. Special Meeting.

(a) A corporation shall hold a special meeting of shareholders:

(1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) if the holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under RSA 293-A:7.03 or RSA 293-A:7.07, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by RSA 293-A:7.05(c), may be conducted at a special shareholders' meeting.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Shareholders' list for meeting, see RSA 293-A:7.20.

Waiver of notice, see RSA 293-A:7.06.

NOTES TO DECISIONS

Cited:

Cited in *In re Unnamed Attorney*, 138 N.H. 729, 645 A.2d 69, 1994 N.H. LEXIS 93 (1994).

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Shareholders' Inspection Rights: Current Law and Proposed Legislation," see 44 N.H.B.J. 20 (Sept. 2003).

293-A:7.03. Court-Ordered Meeting.

(a) The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held:

(1) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(2) on application of a shareholder who signed a demand for a special meeting valid under RSA 293-A:7.02, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(ii) the special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.04. Action Without Meeting.

I. (a) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under RSA 293-A:7.03 or RSA 293-A:7.07, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under RSA 293-A:7.04, I(a).

(c) A consent signed under RSA 293-A:7.04, I has the effect of a meeting vote and may be described as such in any document.

(d) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

II. The articles of incorporation may allow action without meeting under the following as an alternative to RSA 293-A:7.04, I:

(a) Unless otherwise provided in the articles of incorporation, any action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting without prior notice and without a vote, if the action is taken by all the number of shareholders having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all shares entitled to vote thereon were present and voted. The action must be evidenced by one or more written consents describing the action taken, signed by the number of shareholders necessary to take such action, indicating the date of signature of each shareholder, and delivered by hand or by certified or registered mail, return receipt requested, to the corporation for inclusion in the minutes or filing with the corporate records. No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent, it is delivered in the manner required by this paragraph to the corporation. The date of the corporate action shall be the date of delivery to the corporation as required by this paragraph.

(b) If not otherwise fixed under RSA 293-A:7.03 or RSA 293-A:7.07, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(c) A consent signed under RSA 293-A:7.04, II has the effect of a meeting vote and may be described as such in any document.

(d) The corporation must give the shareholders who did not consent in writing prompt written notice of the action. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action, including when appropriate, the dissenters' notice required by RSA 293-A:13.22. The dissenters' notice must be sent no later than 10 days after the corporate action was taken.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.05. Notice of Meeting.

(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under RSA 293-A:7.03 or RSA 293-A:7.07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under RSA 293-A:7.07, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

Source.

1992, 255:1, eff. Jan. 1, 1993.

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article, "Shareholders' Inspection Rights: Current Law and Proposed Legislation," see 44 N.H.B.J. 20 (Sept. 2003).

293-A:7.06. Waiver of Notice.

(a) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.07. Record Date.

(a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

Source.

1992, 255:1, eff. Jan. 1, 1993.

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article, "Shareholders' Inspection Rights:

Current Law and Proposed Legislation," see 44 N.H.B.J. 20 (Sept. 2003).

Part B**Voting****293-A:7.20. Shareholders' List for Meeting.**

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder, beginning 2 business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of RSA 293-A:16.02(c)(1), to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection (b), the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Source.

1992, 255:1.1993, 344:9, eff. July 1, 1993.

Amendments

—1993. Subsection (b): Substituted "RSA 293-A:16.02(c)(1)" for "RSA 293-A:16.02(c)" in the second sentence.

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article, "Shareholders' Inspection Rights: Current Law and Proposed Legislation," see 44 N.H.B.J. 20 (Sept. 2003).

293-A:7.21. Voting Entitlement of Shares.

(a) Except as provided in subsections (b) and (c), or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS**Voting rights**

Stock ownership carries voting rights unless they are limited or denied by the vote authorizing the issue. *Phenix Mut. Fire Ins. Co. v. Rouillard*, 92 N.H. 228, 29 A.2d 134, 1942 N.H. LEXIS 64 (1942). (Decided under prior law.)

Cited:

Cited in *In re Unnamed Attorney*, 138 N.H. 729, 645 A.2d 69, 1994 N.H. LEXIS 93 (1994).

RESEARCH REFERENCES**ALR.**

Validity, construction, and effect of provision in charter or bylaws requiring super-majority vote. 80 A.L.R.4th 667.

293-A:7.22. Proxies.

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months, unless a longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the shareholder, unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) a pledgee;
- (2) a person who purchased or agreed to purchase the shares;
- (3) a creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) an employee of the corporation whose employment contract requires the appointment; or
- (5) a party to a voting agreement created under RSA 293-A:7.31.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to RSA 293-A:7.24 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

1. Contents of proxy
2. Objections to proxy

1. Contents of proxy

A proxy is not invalid because it does not specify the meeting at which it was voted, but merely authorizes the holder to vote the stock at any stockholders' meeting held on or prior to a specified date. *Molloy v. Bemis Bro. Bag Co.*, 174 F. Supp. 785, 1959 U.S. Dist. LEXIS 3099 (D.N.H. 1959), *aff'd*, 283 F.2d 32, 1960 U.S. App. LEXIS 3544 (1st Cir. 1960). (Decided under prior law.)

2. Objections to proxy

Failure of stockholders to challenge a proxy is a waiver of all objections thereto. *Molloy v. Bemis Bro. Bag Co.*, 174 F. Supp. 785, 1959 U.S. Dist. LEXIS 3099 (D.N.H. 1959), *aff'd*, 283 F.2d 32, 1960 U.S. App. LEXIS 3544 (1st Cir. 1960). (Decided under prior law.)

293-A:7.23. Shares Held by Nominees.

(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

- (1) the types of nominees to which it applies;
- (2) the rights or privileges that the corporation recognizes in a beneficial owner;
- (3) the manner in which the procedure is selected by the nominee;
- (4) the information that must be provided when the procedure is selected;
- (5) the period for which selection of the procedure is effective; and
- (6) other aspects of the rights and duties created.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.24. Corporation's Acceptance of Votes.

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(1) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(3) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(4) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(5) two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to

tabulate votes, acting in good faith has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.25. Quorum and Voting Requirements for Voting Groups.

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsections (a) or (c) is governed by RSA 293-A:7.27.

(e) The election of directors is governed by RSA 293-A:7.28.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.26. Action by Single and Multiple Voting Groups.

(a) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in RSA 293-A:7.25.

(b) If the articles of incorporation or this chapter provide for voting by 2 or more voting

groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in RSA 293-A:7.25. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.27. Greater Quorum or Voting Requirements.

(a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter.

(b) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.28. Voting for Directors; Cumulative Voting.

(a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(c) A statement included in the articles of incorporation that "all or a designated voting group of shareholders are entitled to cumulate their votes for directors," or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among 2 or more candidates.

(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(1) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(2) a shareholder who has the right to cumulate his votes gives notice to the corporation not less than 48 hours before the time set for the meeting of his intent to cumulate his votes during the meeting, and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part C

Voting Trusts and Agreements

293-A:7.30. Voting Trusts.

(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date, unless extended under subsection (c).

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

Source.

1992, 255:1, eff. Jan. 1, 1993.

RESEARCH REFERENCES

ALR.

Validity of voting trust created by will.77 A.L.R.4th 1194.

293-A:7.31. Voting Agreements.

(a) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of RSA 293-A:7.30.

(b) A voting agreement created under this section is specifically enforceable.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.32. Shareholder Agreements.

(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or

more other provisions of this chapter in that it:

(1) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in RSA 293-A:6.40;

(3) establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(4) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;

(6) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(7) requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(1) Set forth: (A) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or (B) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation.

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(3) Valid for 10 years, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement as required by RSA 293-A:6.26(b). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the

existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part D

Derivative Proceedings

NOTES TO DECISIONS

Fair and adequate representation

Although this section does not expressly state that the named plaintiff in a derivative action must fairly and ad-

equately represent the interests of other similarly situated shareholders, such a requirement should be implied, given the nature of a derivative action. *Palmer v. U.S. Sav. Bank of Am.*, 131 N.H. 433, 553 A.2d 781, 1989 N.H. LEXIS 6 (1989). (Decided under prior law.)

293-A:7.40. Definitions.

For the purposes of this subdivision:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in RSA 293-A:7.47, in the right of a foreign corporation.

(2) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.41. Standing.

A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Generally

Under New Hampshire law, a qualifying shareholder may bring a derivative action for corporate mismanagement. *Pike v. Edgar*, 801 F. Supp. 907, 1992 U.S. Dist. LEXIS 14987 (D.N.H. 1992), cert. denied, 519 U.S. 1059, 117 S. Ct. 691, 136 L. Ed. 2d 614, 1997 U.S. LEXIS 119 (1997). (Decided under prior law.)

A shareholder may file a bill on behalf of himself and all other stockholders to restrain the directors from making a contract in excess of corporate powers. *March v. Eastern R.R.*, 40 N.H. 548, 1860 N.H. LEXIS 184 (1860). (Decided under prior law.)

293-A:7.42. Demand.

No shareholder may commence a derivative proceeding until:

(1) a written demand has been made upon the corporation to take suitable action; and

(2) ninety days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.43. Stay of Proceedings.

If the corporation commences an inquiry into

the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.44. Dismissal.

(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsections (b) or (f) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (f), the determination in subsection (a) shall be made by:

(1) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(2) a majority vote of a committee consisting of 2 or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

(c) None of the following shall by itself cause a director to be considered not independent for purposes of this section:

(1) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(2) the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(3) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either:

(1) that a majority of the board of directors did not consist of independent directors at the time the determination was made; or

(2) that the requirements of subsection (a) have not been met.

(e) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (a) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of

subsection (a) have not been met.

(f) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.45. Discontinuance or Settlement.

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.46. Payment of Expenses.

On termination of the derivative proceeding the court may:

(1) order the corporation to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's reasonable expenses, including counsel fees, incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading, motion or other paper was not well-grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:7.47. Applicability to Foreign Corporations.

In any derivative proceeding in the right of a foreign corporation, the matters covered by this subdivision shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for RSA 293-A:7.43, 293-A:7.45 and 293-A:7.46.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Cited:

Cited in *In re Tyco Int'l, Ltd.*, 340 F. Supp. 2d 94, 2004 U.S. Dist. LEXIS 20731 (D.N.H. 2004).

Directors and Officers

Part A

Board of Directors

Cross References.

Amendment of articles of incorporation by board of directors, see RSA 293-A:10.02.

Amendment of bylaw by board of directors, see RSA 293-A:10.20.

Bylaw increasing quorum or voting requirement for directors, see RSA 293-A:10.22.

Directors of professional corporation, see RSA 294-A:20.

Dissolution by board of directors, see RSA 293-A:14.02.

General standards for directors, see RSA 293-A:8.30.

Loans to directors, see RSA 293-A:8.32.

Terms of class shares determined by board of directors, see RSA 293-A:6.02.

NOTES TO DECISIONS

1. Negligence
2. Ineligible directors
3. Sale of property
4. Use of money

1. Negligence

The powers and duties of directors are such that in the general management of the business of the corporation their negligence may be called the negligence of the corporation. *Fifield v. Northern R.R.*, 42 N.H. 225, 1860 N.H. LEXIS 25 (1860). (Decided under prior law.)

2. Ineligible directors

If the corporation elects a person a director who is ineligible to that office and permits him to act as such, the corporation will be bound by his acts within the scope of the authority possessed by a director. *Despatch Line of Packets v. Bellamy Mfg. Co.*, 12 N.H. 205, 1841 N.H. LEXIS 30 (1841). (Decided under prior law.)

3. Sale of property

Authority to sell a corporation's property is in the board of directors. *Allen v. Newmarket Indus. Assocs.*, 95 N.H. 121, 58 A.2d 754, 1948 N.H. LEXIS 198 (1948). (Decided under prior law.)

4. Use of money

In the absence of any direction given them on the subject by the stockholders, the directors may determine the use to be made of money obtained by an increase of capital. *Jones v. Concord & M.R.R.*, 67 N.H. 234, 30 A. 614, 1892 N.H. LEXIS 33 (1892). (Decided under prior law.)

293-A:8.01. Requirement for and Duties of Board of Directors.

(a) Except as provided in RSA 293-A:7.32, each corporation shall have a board of directors.

(b) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the

direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under RSA 293-A:7.32.

(c) [Repealed.]

Source.

1992, 255:1, 1994, 117:3, eff. July 10, 1994.

Amendments

—1994. Subparagraph (c): Repealed.

293-A:8.02. Qualifications of Directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.03. Number and Election of Directors.

(a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by 30 percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than 30 percent the number of directors last approved by the shareholders.

(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter, unless their terms are staggered under RSA 293-A:8.06.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Cited:

Cited in *In re Unnamed Attorney*, 138 N.H. 729, 645 A.2d 69, 1994 N.H. LEXIS 93 (1994).

293-A:8.04. Election of Directors by Certain Classes of Shareholders.

If the articles of incorporation authorize di-

viding the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.05. Terms of Directors Generally.

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under RSA 293-A:8.06.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualified or until there is a decrease in the number of directors.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.06. Staggered Terms for Directors.

If there are 9 or more directors, the articles of incorporation may provide for staggering their terms by dividing the total number of directors into 2 or 3 groups, with each group containing $\frac{1}{2}$ or $\frac{1}{3}$ of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.07. Resignation of Directors.

(a) A director may resign at any time by delivering written notice to the board of directors, its chairman, or to the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.08. Removal of Directors by Shareholders.

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing him and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Cited:

Cited in *In re Unnamed Attorney*, 138 N.H. 729, 645 A.2d 69, 1994 N.H. LEXIS 93 (1994).

293-A:8.09. Removal of Directors by Judicial Proceeding.

(a) The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders subject to the provisions of RSA 293-A:7.40 through RSA 293-A:7.47, holding at least 10 percent of the outstanding shares of any class if the court finds that:

(1) The director engaged in fraudulent or illegal conduct with respect to the corporation; and

(2) Removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.10. Vacancy on Board.

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an

increase in the number of directors:

(1) The shareholders may fill the vacancy.

(2) The board of directors may fill the vacancy.

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date by reason of a resignation effective at a later date under RSA 293-A:8.07(b) or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.11. Compensation of Directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part B

Meetings and Action of the Board

293-A:8.20. Meetings and Action of the Board.

(a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.21. Action Without Meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by unanimous consent of all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or

filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.22. Notice of Meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.23. Waiver of Notice.

(a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.24. Quorum and Voting.

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of either:

(1) A majority of the fixed number of directors if the corporation has a fixed board size.

(2) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors

to consist of no fewer than $\frac{1}{3}$ of the fixed or prescribed number of directors determined under subsection (a).

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors, unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(1) he objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting business at the meeting;

(2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or

(3) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Majority vote

Directors may bind the corporation by a major vote of those present at a regular stated meeting or at a special meeting of which all of them have been notified if a quorum are present. *Edgerly v. Emerson*, 23 N.H. 555 (1851). (Decided under prior law.)

A majority of the directors may bind a corporation in the absence of any specific requirement, either where there is a consultation all together and a concurrence of a majority, or where there is a regular meeting at which all might be present, which the majority actually attend and at which they act by a major vote. *Despatch Line of Packets v. Bellamy Mfg. Co.*, 12 N.H. 205, 1841 N.H. LEXIS 30 (1841). (Decided under prior law.)

An act done at a directors' meeting may be presumed to have been the act of a majority until the contrary is shown. *Despatch Line of Packets v. Bellamy Mfg. Co.*, 12 N.H. 205, 1841 N.H. LEXIS 30 (1841). (Decided under prior law.)

293-A:8.25. Committees.

(a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee must have 2 or more members, who serve at the pleasure of the board of directors.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:

(1) a majority of all the directors in office when the action is taken; or

(2) the number of directors required by the articles of incorporation or bylaws to take action under RSA 293-A:8.24.

(c) RSA 293-A:8.20 through 293-A:8.24, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under RSA 293-A:8.01.

(e) A committee may not, however:

- (1) authorize distributions;
- (2) approve or propose to shareholders action that this chapter requires be approved by the shareholders;
- (3) fill vacancies on the board of directors or on any of its committees;
- (4) amend articles of incorporation pursuant to RSA 293-A:10.02;
- (5) adopt, amend, or repeal bylaws;
- (6) approve a plan of merger not requiring shareholder approval;
- (7) authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or
- (8) authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation, to do so within limits specifically prescribed by the board of directors.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in RSA 293-A:8.30.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part C

Standards of Conduct

293-A:8.30. General Standards for Directors.

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner he reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) one or more officers or employees of the corporation whom the director reasonably be-

lieves to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

1. Degree of care
2. Review of actions
3. Claims by bankruptcy creditors

1. Degree of care

Committee of unsecured creditors of a corporate bankruptcy debtor demonstrated a likelihood of success in showing that a relatively new director of the debtor breached fiduciary duties of care and good faith since the evidence indicated that the director failed to make reasonable inquiries into the acts, policies, and practices of the debtor, despite the director's knowledge of its financial difficulties and the director's questions about the capabilities of senior management, and the director's reliance upon the opinions, reports, and statements of officers and employees of the debtor was unwarranted. *Official Comm. of Unsecured Creditors v. Foss (In re Felt Mfg. Co.)*, — B.R. —, 2006 Bankr. LEXIS 1575 (July 12, 2006).

Directors should be held to exercise the same care, caution and prudence which they would be expected to exercise in their own affairs. *March v. Eastern R.R.*, 43 N.H. 515, 1862 N.H. LEXIS 105 (1862). (Decided under prior law.)

2. Review of actions

While directors are obliged to act for the best interest of the corporation, their actions cannot be controlled by the courts in the absence of illegality, irregularity, fraud or gross mismanagement. *Allen v. Newmarket Indus. Assocs.*, 95 N.H. 121, 58 A.2d 754, 1948 N.H. LEXIS 198 (1948). (Decided under prior law.)

3. Claims by bankruptcy creditors

Bankruptcy court denied motions to dismiss claims a Committee of Unsecured Creditors filed against a corporation's former officers and directors, members of their families, and trusts they owned or controlled, seeking recovery of bonuses and other forms of compensation the officers and directors approved when they allegedly knew the corporation was insolvent. The court found that the Committee had stated valid claims for breach of fiduciary duty against the corporation's former officers and directors, and that the *in para delicto* defense did not bar the Committee's breach of fiduciary duty claims; however, the court rejected the Committee's deepening insolvency claim because it had not been recognized by New Hampshire courts. *Official Comm. of Unsecured Creditors v. Foss (In re Felt Mfg. Co.)*, 371 B.R. 589, 2007 Bankr. LEXIS 2569 (July 27, 2007).

RESEARCH REFERENCES

ALR.

Liability of corporate director, officer, or employee for tor-

tious interference with corporation's contract with another.⁷² A.L.R.4th 492.

293-A:8.31. Director Conflict of Interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

(1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;

(2) the material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or

(3) the transaction was fair to the corporation.

(b) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction or (2) another entity of which he is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(c) For purposes of subsection (a)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(d) For purposes of subsection (a)(2), a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b)(1), may not be counted in a vote of shareholders to determine

whether to authorize, approve, or ratify a conflict of interest transaction under subsection (a)(2). The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.32. Loans to Directors.

(a) Except as provided by subsection (c), a corporation may not lend money to or guarantee the obligation of a director of the corporation unless:

(1) the particular loan or guarantee is approved by a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group, except the votes of shares owned by or voted under the control of the benefited director; or

(2) the corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees.

(b) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

(c) This section does not apply to loans and guarantees authorized by statute regulating any special class or corporations.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.33. Liability for Unlawful Distributions.

(a) A director who votes for or assents to a distribution made in violation of RSA 293-A:6.40 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating RSA 293-A:6.40 or the articles of incorporation if it is established that he did not perform his duties in compliance with RSA 293-A:8.30. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to contribution:

(1) from every other director who could be held liable under subsection (a) for the unlawful distribution; and

(2) from each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of RSA 293-A:6.40 or the articles of incorporation.

(c) A proceeding under this section is barred unless it is commenced within 2 years after the date on which the effect of the distribution was measured under RSA 293-A:6.40(e) or (g).

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Cited:

Cited in Official Comm. of Unsecured Creditors v. Foss (In re Felt Mfg. Co.), 371 B.R. 589, 2007 Bankr. LEXIS 2569 (July 27, 2007).

Part D
Officers

Cross References.

Officers of insurance companies, see RSA 401:13.

Officers of professional corporations, see RSA 294-A:20.

NOTES TO DECISIONS

Notes

Notes of a corporation signed by its officers acting within the scope of their authority are binding upon it, provided they are made or given for any of the legitimate purposes for which it was incorporated. *Richards v. Merrimack & C. R. R.R.*, 44 N.H. 127, 1862 N.H. LEXIS 137 (1862). (Decided under prior law.)

293-A:8.40. Required Officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Cited:

Cited in *In re Unnamed Attorney*, 138 N.H. 729, 645 A.2d 69, 1994 N.H. LEXIS 93 (1994).

293-A:8.41. Duties of Officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

1. Source of authority
2. Scope of authority

1. Source of authority

Officers appointed by the directors to execute a contract on behalf of the corporation are agents of the corporation and not of the directors, so that their authority is not ipso facto terminated by the election of new directors prior to the signing of the agreement. *Kidd v. New Hampshire Traction Co.*, 74 N.H. 160, 66 A. 127, 1907 N.H. LEXIS 16 (1907). (Decided under prior law.)

The directors and not the president have the powers of the corporation, and the president must therefore derive his power from the board of directors or from the corporation. *Wait v. Nashua Armory Ass'n*, 66 N.H. 581, 23 A. 77, 1891 N.H. LEXIS 86, 14 L.R.A. 356 (1891). (Decided under prior law.)

2. Scope of authority

Officers of a corporation have only those powers conferred on them by the bylaws of the corporation or by the resolution of the directors. *Daniel Webster Council, Inc. v. St. James Ass'n*, 129 N.H. 681, 533 A.2d 329, 1987 N.H. LEXIS 250 (1987). (Decided under prior law.)

Officers of the corporation may contract only as authorized by the directors. *Holland v. Laconia Bldg. & Loan Ass'n*, 68 N.H. 480, 41 A. 178, 1896 N.H. LEXIS 36 (1896). (Decided under prior law.)

Cited:

Cited in *In re Unnamed Attorney*, 138 N.H. 729, 645 A.2d 69, 1994 N.H. LEXIS 93 (1994).

293-A:8.42. Standards of Conduct for Officers.

(a) An officer with discretionary authority shall discharge his duties under that authority:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner he reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
- (2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.43. Resignation and Removal of Officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Cited:

Cited in *In re Unnamed Attorney*, 138 N.H. 729, 645 A.2d 69, 1994 N.H. LEXIS 93 (1994).

293-A:8.44. Contract Rights of Officers.

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part E

Indemnification

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Director Liability in Non-Profit Corporations: What Is It? How to Avoid It," see 34 N.H.B.J.57 (1993).

293-A:8.50. Definitions.

In this subdivision:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the

corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; and

(ii) when used with respect to an individual other than a director, as contemplated in RSA 293-A:8.56, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.51. Authority to Indemnify.

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because he is or was a director, against liability incurred in the proceeding if:

(1) he conducted himself in good faith; and

(2) he reasonably believed:

(i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(ii) in all other cases, that his conduct was at least not opposed to its best interests; and

(3) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subparagraph (a)(2)(ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not

meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) in connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.52. Mandatory Indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.53. Advance for Expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) the director furnishes the corporation a written affirmation of his good faith belief that he has met the standard of conduct described in RSA 293-A:8.51;

(2) the director furnishes the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this subdivision.

(b) The undertaking required by subparagraph (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in RSA 293-A:8.55.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.54. Court-Ordered Indemnification.

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines:

(1) the director is entitled to mandatory indemnification under RSA 293-A:8.52, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in RSA 293-A:8.51 or was adjudged liable as described in RSA 293-A:8.51(d), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.55. Determination and Authorization of Indemnification.

(a) A corporation may not indemnify a director under RSA 293-A:8.51, unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in RSA 293-A:8.51.

(b) The determination shall be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if a quorum cannot be obtained under subparagraph (b)(1) by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of 2 or more directors not at the time parties to the proceeding;

(3) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subparagraphs (1) or (2); or

(ii) if a quorum of the board of directors cannot be obtained under subparagraph (b)(3)(i) and a committee cannot be designated under subparagraph (b)(2), selected by majority vote of the full board of directors in which selection directors who are parties may participate.

(4) by the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subparagraph (b)(3) to select counsel.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.56. Indemnification of Officers, Employees, and Agents.

Unless a corporation's articles of incorporation provide otherwise:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under RSA 293-A:8.52, and is entitled to apply for court-ordered indemnification under RSA 293-A:8.54, in each case to the same extent as a director;

(2) the corporation may indemnify and advance expenses under this subdivision to an officer, employee or agent of the corporation who is not a director, to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.57. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under RSA 293-A:8.51 or 293-A:8.52.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:8.58. Application of This Subdivision.

(a) A provision treating a corporation's indemnification of or advance for expenses to

directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this subdivision. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This subdivision does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:9.00. [Reserved.]

Amendment of Articles of Incorporation and Bylaws

Part A

Amendment of Articles of Incorporation

Cross References.

Right to dissent, see RSA 293-A:13.02.

293-A:10.01. Authority to Amend.

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:10.02. Amendment by Board of Directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the name and address of the initial registered agent or registered office, if a

statement of change is on file with the secretary of state;

(4) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) to change the corporate name by substituting the word "corporation," "incorporated," "limited," or the abbreviation "corp.," "inc.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or

(6) to make any other change expressly permitted by this chapter to be made without shareholder action.

Source.

1992, 255:1.1993, 344:10, eff. July 1, 1993.

Amendments

—1993. Subparagraph (5): Deleted "company" following "incorporated" and "co." following "inc."

293-A:10.03. Amendment by Board of Directors and Shareholders.

(a) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

(1) The board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(2) The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (e).

(c) The board of directors may condition its submission of the proposed amendment on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RSA 293-A:7.05. The notice of meeting shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless this chapter, the articles of incorporation, or the board of directors, acting pursuant to subsection (c), require a greater vote or a vote by voting groups, the amendment to be adopted shall be approved by:

(1) A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(2) The votes required by RSA 293-A:7.25 and 293-A:7.26 by every other voting group entitled to vote on the amendment.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Dissenter's rights, see RSA 293-A:13.01 et seq.

Notice of shareholders' meetings, see RSA 293-A:7.05.

293-A:10.04. Voting on Amendments by Voting Groups.

(a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of the class;

(2) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(3) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(4) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(5) change the shares of all or part of the class into a different number of shares of the same class;

(6) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(7) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(8) limit or deny an existing preemptive right of all or part of the shares of the class; or

(9) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles 2 or more series of shares to vote as separate voting groups under this section would affect those 2 or more series in the same or a substantially similar way, the shares of all the series so affected shall vote together as a single voting group on the proposed amendment.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:10.05. Amendment Before Issuance of Shares.

If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:10.06. Articles of Amendment.

A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

- (1) The name of the corporation.
- (2) The text of each amendment adopted.
- (3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.
- (4) The date of each amendment's adoption.
- (5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required.
- (6) If an amendment was approved by the shareholders:
 - (i) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting.
 - (ii) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Filing, service, copying and special fees, see RSA 293-A:1.22.

293-A:10.07. Restated Articles of Incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

(b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in RSA 293-A:10.03.

(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders'

meeting in accordance with RSA 293-A:7.05. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(1) whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(2) if the restatement contains an amendment to the articles requiring shareholder approval, the information required by RSA 293-A:10.06.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(f) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (d).

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Filing, service, copying and special fees, see RSA 293-A:1.22.

Restated articles of incorporation of insurance corporations, see RSA 401:14.

293-A:10.08. Amendment Pursuant to Reorganization.

(a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by RSA 293-A:2.02.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

- (1) The name of the corporation.
 - (2) The text of each amendment approved by the court.
 - (3) The date of the court's order or decree approving the articles of amendment.
 - (4) The title of the reorganization proceeding in which the order or decree was entered.
 - (5) A statement that the court had jurisdiction of the proceeding under federal statute.
- (c) Shareholders of a corporation undergoing reorganization do not have dissenters' rights,

except as and to the extent provided in the reorganization plan.

(d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:10.09. Effect of Amendment.

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part B

Amendment of Bylaws

NOTES TO DECISIONS

Construction with other laws

Having interpreted RSA 301:10, governing the adoption of bylaws by cooperative associations, as granting members of a cooperative association the power both to adopt and to amend bylaws, the supreme court concluded that the provision of this section which permits amendment by the directors was inconsistent with the former section, and thus inapplicable to cooperative associations. *Whitman v. New Hampshire Elec. Coop.*, 123 N.H. 111, 459 A.2d 224, 1983 N.H. LEXIS 238 (1983). (Decided under prior law.)

To interpret this section as vesting the power of amendment and repeal in the directors of a cooperative association would subvert the provisions in RSA 301:10, governing adoption of bylaws by the cooperative associations, which grant the members the power of adoption, since such an interpretation would permit the directors unlimited authority to rewrite the bylaws and would therefore render largely illusory the members' power of adoption. *Whitman v. New Hampshire Elec. Coop.*, 123 N.H. 111, 459 A.2d 224, 1983 N.H. LEXIS 238 (1983). (Decided under prior law.)

293-A:10.20. Amendment by Board of Directors or Shareholders.

(a) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(1) The articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part; or

(2) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors shall not amend or repeal that bylaw.

(b) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:10.21. Bylaw Increasing Quorum or Voting Requirement for Shareholders.

(a) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (a) shall not be adopted, amended, or repealed by the board of directors.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:10.22. Bylaw Increasing Quorum or Voting Requirement for Directors.

(a) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(1) If originally adopted by the shareholders, only by the shareholders.

(2) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it shall be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subparagraph (a)(2) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Merger and Share Exchange

293-A:11.01. Merger.

(a) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if

required by RSA 293-A:11.03, approve a plan of merger.

(b) The plan of merger shall set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge.

(2) The terms and conditions of the merger.

(3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

(c) The plan of merger may set forth:

(1) Amendments to the articles of incorporation of the surviving corporation.

(2) Other provisions relating to the merger.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Merger of building and loan associations, see RSA 393:55.

Merger of insurance corporations, see RSA 401:11.

Merger of investment trusts, see RSA 293-B:17.

Merger of professional corporations, see RSA 294-A:22.

Right to dissent, see RSA 293-A:13.02.

RESEARCH REFERENCES

ALR.

Duty of corporate directors to exercise "informed" judgment in recommending responses to merger or tender offers.46 A.L.R.4th 887.

293-A:11.02. Share Exchange.

(a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by RSA 293-A:11.03, approve the exchange.

(b) The plan of exchange shall set forth:

(1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation.

(2) The terms and conditions of the exchange.

(3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Merger or share exchange with foreign corporations, see RSA 293-A:11.07.

Right to dissent, see RSA 293-A:13.02.

293-A:11.03. Action on Plan.

(a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (g), or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

(1) The board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(2) The shareholders entitled to vote shall approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RSA 293-A:7.05. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation, or the board of directors, acting pursuant to subsection (c) require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(f) Separate voting by voting groups is required:

(1) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under RSA 293-A:10.04.

(2) On a plan of share exchange by each class or series to shares included in the exchange, with each class or series constituting a separate voting group.

(g) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(1) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RSA 293-A:10.02, from its articles before the merger.

(2) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger

will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after.

(3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20 percent the total number of voting shares of the surviving corporation outstanding immediately before the merger.

(4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrant issued pursuant to the merger, will not exceed by more than 20 percent the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g):

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:11.04. Merger of Subsidiary.

(a) A parent corporation owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

(1) The names of the parent and subsidiary.

(2) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent shall not deliver articles of merger to the secretary of state for filing until at

least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(e) Articles of merger under this section shall not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in RSA 293-A:10.02.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:11.05. Articles of Merger or Share Exchange.

(a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth:

(1) The plan of merger or share exchange.

(2) If shareholder approval was not required, a statement to that effect.

(3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(b) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Filing, service, copying and special fees, see RSA 293-A:1.22.

293-A:11.06. Effect of Merger or Share Exchange.

(a) When a merger takes effect:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.

(2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment.

(3) The surviving corporation has all liabilities of each corporation party to the merger.

(4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.

(5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger.

(6) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under RSA 293-A:13.01 through 293-A:13.31.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under RSA 293-A:13.01 through RSA 293-A:13.31.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

1. Construction
2. De facto merger

1. Construction

Although corporation was not a named insured in policy of company whose assets it purchased, insurer was not entitled to summary judgment where a material issue of fact existed as to whether corporation's purchase of assets was really the purchase of the entire business and, as a result, purchaser was the corporate successor and thus entitled to coverage under predecessor's insurance policy. *Total Waste Management Corp. v. Commercial Union Ins. Co.*, 857 F. Supp. 140, 1994 U.S. Dist. LEXIS 9816 (D.N.H. 1994).

2. De facto merger

Defendant charity did not enter into a de facto merger with lessee so as to be liable to lessor on its lease agreement with the lessee entered into when the charity and lessee were making plans to merge where (1) having common members on the boards of directors did not necessarily demonstrate a continuity of management, and there was virtually no continuity of management and personnel; (2) the charity began servicing the lessee's accounts by using the lessee's funds pursuant to a service agreement and did not assume any of the lessee's obligations or commingle funds; (3) no assets changed hands; and (4) neither company ceased operations or liquidated. *J.G.M.C.J. Corp. v. C.L.A.S.S., Inc.*, — N.H. —, 924 A.2d 400, 2007 N.H. LEXIS 75 (May 15, 2007).

Cited:

Cited in *Bielagus v. EMRE of N.H. Corp.*, 149 N.H. 635, 826 A.2d 559, 2003 N.H. LEXIS 94 (2003).

RESEARCH REFERENCES

ALR.

Successor corporation; liability of successor corporation for punitive damages for injury caused by predecessor's product. 55 A.L.R.4th 166.

293-A:11.07. Merger or Share Exchange With Foreign Corporation.

(a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger.

(2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated.

(3) The foreign corporation complies with RSA 293-A:11.05 if it is the surviving corporation of the merger or acquiring corporation of the share exchange.

(4) Each domestic corporation complies with the applicable provisions of RSA 293-A:11.01 through 293-A:11.04 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with RSA 293-A:11.05.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(1) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchanges; and

(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under RSA 293-A:13.01 through 293-A:13.31.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Failure to file plan of merger, see RSA 293-A:15.30.

Right to dissent, see RSA 293-A:13.02.

293-A:11.08. Merger of Corporation and Other Entities.

(a) As used in this section, "other entity" or "other entities" shall mean domestic or foreign limited liability companies and limited partnerships authorized by applicable statute to merge with a corporation.

(b) Any one or more corporations may merge with one or more other entities. Such corporation or corporations and such one or more other entities may merge with or into a corporation,

which may be any one of such corporations, or they may merge with or into an other entity, which may be any one of such other entities, pursuant to an agreement or plan of merger complying and approved in accordance with this section and otherwise in compliance with this section.

(c) Each such corporation and other entity shall enter into a written agreement or plan of merger. The agreement shall state:

- (1) The terms and conditions of the merger;
- (2) The mode of carrying the same into effect;
- (3) The manner of converting the shares of stock of each such corporation and the limited liability company or partnership interests of each such other entity into shares, limited liability company or partnership interests, or other securities of the entity surviving such merger, and if any shares of any such corporation or any limited liability company or partnership interests of any such other entity are not to be converted solely into shares, limited liability company or partnership interests, or other securities of the entity surviving such merger, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or limited liability company or partnership interests are to receive in exchange for, or upon conversion, of such shares or limited liability company or partnership interests and the surrender of any certificates evidencing such shares or interests, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, limited liability company or partnership interests, or other securities of the entity surviving such merger; and

(4) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving corporation or other entity. Any of the terms of the agreement or plan of merger may be made dependent upon facts ascertainable outside of such agreement or plan, provided that the manner in which such facts shall operate upon the terms of the agreement or plan is clearly and expressly set forth in the agreement or plan of merger.

(d) The agreement or plan required by subsection (c) shall be adopted by the board of directors of each of the corporations and approved by the shareholders of each of the corporations to the extent required and in the same manner as is provided in RSA 293-A:11.03 and, in the case of the other entities, shall be approved in accordance with their limited liability company or partnership agreements and in accordance with the laws of the state under which they are formed, as the case may be.

(e) After a plan or agreement of merger is adopted and approved in the manner required

by subsection (d), the surviving corporation or other entity shall deliver to the secretary of state for filing a certificate of merger setting forth:

(1) The name and jurisdiction of formation or organization of each business entity that is to merge;

(2) That an agreement or plan of merger has been approved, adopted, and executed by each business entity that is a party to the merger;

(3) The name of the surviving entity;

(4) If a corporation is the surviving entity of the merger, the plan of merger;

(5) If shareholder approval was not required, a statement to that effect;

(6) If approval of the shareholders of one or more corporations party to the merger was required:

(i) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;

(7) In the case of a merger in which a corporation is the surviving entity, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger; and

(8) If the surviving entity is not a corporation, that the executed agreement of merger is on file at the principal place of business of the surviving business entity and the address thereof and that a copy of the agreement of merger will be furnished by the surviving entity, on request and without cost, to any shareholder of any constituent corporation, any member of any constituent limited liability company, or any partner of a constituent limited partnership.

(f) A merger takes effect upon the effective date of the certificate of merger.

(g) Upon the merger taking effect, a surviving foreign corporation or other entity of a merger is deemed:

(1) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger; and

(2) To agree that it will promptly pay to the dissenting shareholders of each corporation party to the merger the amount, if any, to which they are entitled under RSA 293-A:13.01 through 293-A:13.31.

Source.

1997, 120:2, eff. Aug. 8, 1997.

293-A:11.09. Approval of Conversion of a Corporation.

A corporation may convert to a limited liability company organized under the laws of the state of New Hampshire upon the authorization of such conversion in accordance with this section and fulfillment of the requirements of RSA 304-C:17-a. The board of directors of the corporation shall adopt a plan of conversion and shall submit the plan of conversion for approval of the shareholders in the manner provided for shareholder approval of a plan of merger under RSA 293-A:11.03 for a merger requiring shareholder approval. After a plan of conversion is authorized and at any time before the certificate of conversion is filed, the planned conversion may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedures set forth in the plan of conversion, or if none is set forth, in the manner determined by the board of directors. The term "corporation," as used in this section, shall include nondepository trust companies incorporated as banking corporations under the provisions of RSA 392 or RSA 392-A. Such nondepository trust companies shall be entitled to employ the procedures provided in this section to voluntarily dissolve their trust company charters pursuant to RSA 392:43-47 and to reorganize as domestic business corporations subject to the provisions of this statute.

Source.

1997, 120:2, eff. Aug. 8, 1997. 2003, 65:3, eff. July 26, 2003.

Amendments

—2003. Added the fourth and fifth sentences.

Sale of Assets**293-A:12.01. Sale of Assets in Regular Course of Business and Mortgage of Assets.**

(a) A corporation, on the terms and conditions and for the consideration determined by the board of directors, may:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business.

(2) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business.

(3) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(b) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (a) is not required.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS**Successor liability not found**

Buyer of a realty corporation was not subject to the realty corporation's liability on an unpaid promissory note because the sale between the parties was in the nature of an asset purchase agreement and not a continuation of the realty's business operations where the realty remained a viable operation in the commercial real estate business; as such, neither the de facto merger or "mere continuation" exceptions to the prohibition against successor liability applied. *Bielagus v. EMRE of N.H. Corp.*, 149 N.H. 635, 826 A.2d 559, 2003 N.H. LEXIS 94 (2003).

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article, "Bielagus v. EMRE: NH Rejects Expansion of Traditional Test for Corporate Successor Liability Following an Asset Purchase," see 45 N.H.B.J. 26 (Sept. 2004).

293-A:12.02. Sale of Assets Other Than in Regular Course of Business.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the goodwill, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(b) For a transaction to be authorized:

(1) The board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(2) The shareholders entitled to vote shall approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RSA 293-A:7.05. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(e) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (c) require a greater vote or a vote by voting groups, the transaction to be authorized shall be approved by a majority of all the votes entitled to be cast on the transaction.

(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any con-

tractual rights, without further shareholder action.

(g) A transaction that constitutes a distribution is governed by RSA 293-A:6.40 and not by this section.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Notice of shareholders' meetings, see RSA 293-A:7.05.

Right to dissent, see RSA 293-A:13.02.

NOTES TO DECISIONS

Waiver of rights

Waiver by stockholders of their right to distribution of assets of a corporation ordinarily requires a formal vote. In re Hitchcock Clinic, Inc., 127 N.H. 62, 499 A.2d 974, 1985 N.H. LEXIS 442 (1985). (Decided under prior law.)

Dissenters' Rights

Part A

Right to Dissent and Obtain Payment for Shares

293-A:13.01. Definitions.

In this subdivision:

(1) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation or other entity by merger, share exchange, or conversion of that issuer.

(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under RSA 293-A:13.02 and who exercises that right when and in the manner required by RSA 293-A:13.20 through 293-A:13.28.

(3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action, unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(5) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

Source.

1992, 255:1, eff. Jan. 1, 1993. 1997, 120:3, eff. Aug. 8, 1997.

Amendments

—1997. Subdivision (1): Inserted "or other entity" preceding "by merger" and deleted "or" thereafter and inserted "or conversion" following "exchange".

293-A:13.02. Right to Dissent.

(a) A shareholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party:

(i) If shareholder approval is required for the merger by RSA 293-A:11.03 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) If the corporation is a subsidiary that is merged with its parent under RSA 293-A:11.04.

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale.

(4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) Alters or abolishes a preferential right of the shares.

(ii) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares.

(iii) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities.

(iv) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights.

(v) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under RSA 293-A:6.04.

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or non-voting shareholders are entitled to dissent and obtain payment for their shares.

(6) Consummation of a plan of conversion to which the corporation is a party converting to another entity.

(b) A shareholder entitled to dissent and obtain payment for his shares under this subdivision shall not challenge the corporate action creating his entitlement, unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

Source.

1992, 255:1, eff. Jan. 1, 1993. 1997, 120:5, eff. Aug. 8, 1997.

Amendments

—1997. Paragraph (a)(6): Added.

293-A:13.03. Dissent by Nominees and Beneficial Owners.

(a) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(b) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(1) He submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(2) He does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part B

Procedure for Exercise of Dissenters' Rights

293-A:13.20. Notice of Dissenters' Rights.

(a) If proposed corporate action creating dissenters' rights under RSA 293-A:13.02 is submitted to a vote at a shareholders' meeting, the meeting notice shall state that shareholders are or may be entitled to assert dissenters' rights under this subdivision and be accompanied by a copy of this subdivision.

(b) If corporate action creating dissenters' rights under RSA 293-A:13.02 is taken without a vote of shareholders or by consent pursuant to RSA 293-A:7.04, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in RSA 293-A:13.22.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:13.21. Notice of Intent to Demand Payment.

(a) If proposed corporate action creating dissenters' rights under RSA 293-A:13.02 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(1) Shall deliver to the corporation before the vote is taken written notice of his intent to demand payment for his shares if the proposed action is effectuated; and

(2) Shall not vote his shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment for his shares under this subdivision.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:13.22. Dissenters' Notice.

(a) If proposed corporate action creating dissenters' rights under RSA 293-A:13.02 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of RSA 293-A:13.21.

(b) The dissenters' notice shall be sent no later than 10 days after corporate action was taken, and shall:

(1) State where the payment demand shall be sent and where and when certificates for certificated shares shall be deposited.

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received.

(3) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not he acquired beneficial ownership of the shares before that date.

(4) Set a date by which the corporation shall receive the payment demand, which date shall not be fewer than 30 nor more than 60 days after the date the notice is delivered.

(5) Be accompanied by a copy of this subdivision.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:13.23. Duty to Demand Payment.

(a) A shareholder sent a dissenters' notice described in RSA 293-A:13.22 shall demand payment, certify whether he acquired beneficial ownership of the shares before the date required to be set forth, in the dissenters' notice pursuant to RSA 293-A:13.22(b)(3), and deposit his certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits his share certificates under subsection (a) retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit his share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his shares under this subdivision.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:13.24. Share Restrictions.

(a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under RSA 293-A:13.26.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:13.25. Payment.

(a) Except as provided in RSA 293-A:13.27, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with RSA 293-A:13.23 the amount the corporation estimates to be the fair value of his shares, plus accrued interest.

(b) The payment shall be accompanied by:

(1) The corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(2) A statement of the corporation's estimate of the fair value of the shares;

(3) An explanation of how the interest was calculated;

(4) A statement of the dissenter's right to demand payment under RSA 293-A:13.28; and

(5) A copy of this subdivision.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Transfer of stock

Where a corporation tenders payment of the appraised price of stock to dissenting stockholders and demands transfer of the stock to the corporation, it is entitled, as a matter of law, to an order compelling the dissenting stockholders to transfer their stock to the corporation in the event of their failure to do so. *BankEast Corp. v. Galdi*, 125 N.H. 280, 480

A.2d 136, 1984 N.H. LEXIS 276 (1984). (Decided under prior law.)

293-A:13.26. Failure to Take Action.

(a) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under RSA 293-A:13.22 and repeat the payment demand procedure.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:13.27. After-Acquired Shares.

(a) A corporation may elect to withhold payment required by RSA 293-A:13.25 from a dissenter, unless he was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(b) To the extent the corporation elects to withhold payment under subsection (a), after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RSA 293-A:13.28.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:13.28. Procedure if Shareholder Dissatisfied With Payment or Offer.

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate, less any payment under RSA 293-A:13.25, or reject the corporation's offer under RSA 293-A:13.27 and demand payment of the fair value of his shares and interest due, if:

(1) The dissenter believes that the amount paid under RSA 293-A:13.25 or offered under RSA 293-A:13.27 is less than the fair value of his shares or that the interest due is incorrectly calculated;

(2) The corporation fails to make payment under RSA 293-A:13.25 within 60 days after the date set for demanding payment; or

(3) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing under subsection (a) within 30 days after the corporation made or offered payment for his shares.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Withdrawal from appraisal process

Public policy, premised on a sense of fair play and mutual-ity of obligations, would require dissenting stockholders to be bound to their elected remedy of appraisal pursuant to this section following the decision of the appraisers, since if dissenting stockholders were permitted to withdraw from the appraisal process following the decision of the appraisers, corporate uncertainty and the opportunity for stock manipulation would result. *BankEast Corp. v. Galdi*, 125 N.H. 280, 480 A.2d 136, 1984 N.H. LEXIS 276 (1984). (Decided under prior law.)

Where dissenting stockholders voluntarily elected to subject all of their stock to the appraisal process pursuant to this section and made no attempt to withdraw any of it from the process prior to the appraisers' decision, the dissenting stockholders had elected their remedy, were bound by its terms, and could not, accordingly, withdraw all of their shares from the appraisal process or withdraw, without any liability to the corporation, those shares purchased after receiving notice of the corporate action from which they subsequently dissented. *BankEast Corp. v. Galdi*, 125 N.H. 280, 480 A.2d 136, 1984 N.H. LEXIS 276 (1984). (Decided under prior law.)

Part C

Judicial Appraisal of Shares

293-A:13.30. Court Action.

(a) If a demand for payment under RSA 293-A:13.28 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall commence the proceeding in the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation or other entity without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or converted into or whose shares were acquired by the foreign corporation or other entity was located.

(c) The corporation shall make all dissenters, whether or not residents of this state, whose

demands remain unsettled parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of their value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each dissenter made a party to the proceeding is entitled to judgment:

(1) For the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation; or,

(2) For the fair value, plus accrued interest, of his after-acquired shares for which the corporation elected to withhold payment under RSA 293-A:13.27.

Source.

1992, 255:1, eff. Jan. 1, 1993. 1997, 120:4, eff. Aug. 8, 1997.

Amendments

—1997. Subsection (b): Inserted "or other entity" following "foreign corporation" in two places and "or converted into" following "merged with" in the second sentence.

NOTES TO DECISIONS

Cited:

Cited in *Jenkins v. G2S Constructors, Inc.*, 140 N.H. 219, 665 A.2d 354, 1995 N.H. LEXIS 129 (1995).

293-A:13.31. Court Costs and Counsel Fees.

(a) The court in an appraisal proceeding commenced under RSA 293-A:13.30 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under RSA 293-A:13.28.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of RSA 293-A:13.20 through RSA 293-A:13.28.

(2) Against either the corporation or a dissenter, in favor of any other party, if the court

finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subdivision.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Dissolution

Cross References.

Voluntary dissolution of nondepository trust companies, see RSA 392:43 et seq.

NOTES TO DECISIONS

1. Construction
2. Application of chapter
3. Debt liability
4. Rights of former shareholders
5. Late suits

1. Construction

The supreme court will strictly construe RSA 293-A:95, I(c), governing continuance of a dissolved corporation, and this section, its companion statute. *Jenot v. White Mountain Acceptance Corp.*, 124 N.H. 701, 474 A.2d 1382, 1984 N.H. LEXIS 345 (1984). (Decided under prior law.)

Strict construction of this section is required because matters concerning corporation continuance upon dissolution affect the fundamental law of the corporation enacted by the state which brought the corporation into being. *MBC, Inc. v. Engel*, 119 N.H. 8, 397 A.2d 636, 1979 N.H. LEXIS 221 (1979). (Decided under prior law.)

The policy of this section is to insure that there is a definite point in time at which the existence of a corporation and the transaction of its business are terminated. *MBC, Inc. v. Engel*, 119 N.H. 8, 397 A.2d 636, 1979 N.H. LEXIS 221 (1979). (Decided under prior law.)

This section exclusively controls matters concerning dissolved corporations; all remedies available to either the corporation or the shareholder may be enforced only during the statutory continuance period, and former shareholder has no greater rights than the defunct corporation. *MBC, Inc. v. Engel*, 119 N.H. 8, 397 A.2d 636, 1979 N.H. LEXIS 221 (1979). (Decided under prior law.)

2. Application of chapter

The fact that an organization which was legally constituted as a business corporation, and has accepted all of the benefits and obligations of that status, had continuously comported itself as a charitable organization did not render this chapter inapplicable to the formal dissolution of the corporation; this chapter applies by its terms to every formal corporate dissolution. *In re Hitchcock Clinic, Inc.*, 127 N.H. 62, 499 A.2d 974, 1985 N.H. LEXIS 442 (1985). (Decided under prior law.)

3. Debt liability

The liability of a corporation for a debt continues after a repeal of its charter. *Blake v. Portsmouth & C.R.R.*, 39 N.H. 435, 1859 N.H. LEXIS 56 (1859). (Decided under prior law.)

4. Rights of former shareholders

This section expands rather than limits the rights and remedies of dissolved corporations, and was not intended to supplant or limit the well established equitable rule that the assets of a dissolved corporation devolve to the former

shareholders. *Fischer v. City of Dover*, 131 N.H. 469, 554 A.2d 1293, 1989 N.H. LEXIS 16 (1989), cert. denied, 502 U.S. 899, 112 S. Ct. 276, 116 L. Ed. 2d 228, 1991 U.S. LEXIS 5324 (1995). (Decided under prior law.)

5. Late suits

Equity would not intervene to permit shareholders of a dissolved corporation to commence suit or action after the statutory three-year corporation continuance period had elapsed. *MBC, Inc. v. Engel*, 119 N.H. 8, 397 A.2d 636, 1979 N.H. LEXIS 221 (1979). (Decided under prior law.)

Part A

Voluntary Dissolution

293-A:14.01. Dissolution by Incorporators or Initial Directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

- (1) The name of the corporation.
- (2) The date of its incorporation.
- (3) Either:
 - (i) That none of the corporation's shares has been issued; or
 - (ii) That the corporation has not commenced business.
- (4) That no debt of the corporation remains unpaid.
- (5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued.
- (6) That a majority of the incorporators or initial directors authorized the dissolution.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:14.02. Dissolution by Board of Directors and Shareholders.

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance

with RSA 293-A:7.05. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted shall be approved by a majority of all the votes entitled to be cast on that proposal.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Reservation of names by insurance companies, see RSA 401:16.

NOTES TO DECISIONS

Corporate status

The fact that an organization which was legally constituted as a business corporation, and had accepted all of the benefits and obligations of that status, had continuously comported itself as a charitable organization did not render this chapter inapplicable to the formal dissolution of the corporation; this chapter applies by its terms to every formal corporate dissolution. *In re Hitchcock Clinic, Inc.*, 127 N.H. 62, 499 A.2d 974, 1985 N.H. LEXIS 442 (1985). (Decided under prior law.)

293-A:14.03. Articles of Dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

- (1) The name of the corporation.
- (2) The date dissolution was authorized.
- (3) If dissolution was approved by the shareholders:

- (i) The number of votes entitled to be cast on the proposal to dissolve; and

- (ii) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

(4) If voting by voting groups was required, the information required by subparagraph (a)(3) shall be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(5) A certificate of mailing of a copy of the articles of dissolution to the department of revenue.

(b) A corporation is dissolved effective as of the date of filing its articles of dissolution.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Filing, service, copying and special fees, see RSA 293-A:1.22.

293-A:14.04. Revocation of Dissolution.

(a) A corporation may revoke its dissolution within 120 days of its effective date.

(b) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation.
- (2) The effective date of the dissolution that was revoked.
- (3) The date that the revocation of dissolution was authorized.

(4) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect.

(5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

(6) If shareholder action was required to revoke the dissolution, the information required by RSA 293-A:14.03(a)(3) or (4).

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it reverts back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Filing, service, copying and special fees, see RSA 293-A:1.22.

Notice of shareholders' meetings, see RSA 293-A:7.05.

293-A:14.05. Effect of Dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) Collecting its assets.
- (2) Disposing of its properties that will not be distributed in kind to its shareholders.
- (3) Discharging or making provision for discharging its liabilities.

(4) Distributing its remaining property among its shareholders according to their interests.

(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Prior to making any distribution of its remaining property among its shareholders according to their interests, the corporation shall

first obtain a certificate of dissolution from the department of revenue administration in accordance with RSA 77-A:18 and RSA 77-E:12.

(c) Dissolution of a corporation does not:

(1) Transfer title to the corporation's property.

(2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records.

(3) Subject its directors or officers to standards of conduct different from those prescribed in RSA 293-A:8.01 through 293-A:8.58.

(4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

(5) Prevent commencement of a proceeding by or against the corporation in its corporate name.

(6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

(7) Terminate the authority of the registered agent of the corporation.

Source.

1992, 255:1. 1993, 350:26, eff. July 1, 1993.

Amendments

—1993. Subsection (b): Added "and RSA 77-E:12" at the end of the subsection.

Severability

—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

NOTES TO DECISIONS

Distribution of assets

Petition for declaratory judgment should have been denied, where it was brought by corporation whose directors decided to dissolve the corporation and reorganize it as a not-for-profit organization, and they requested a ruling that the corporation was obliged, on dissolution, to distribute its assets to the new organization rather than to the stockholders, since both the corporation's articles of agreement and this section mandated that upon dissolution the net assets of a corporation be distributed to the stockholders. *In re Hitchcock Clinic, Inc.*, 127 N.H. 62, 499 A.2d 974, 1985 N.H. LEXIS 442 (1985). (Decided under prior law.)

RESEARCH REFERENCES

ALR.

Liability of shareholders, directors, and officers where corporate business is continued after its dissolution. 72 A.L.R.4th 419.

293-A:14.06. Known Claims Against Dissolved Corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice shall:

(1) Describe information that shall be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline.

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(d) For purposes of this section, "claim" shall not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Construction

"Obligations" in the context of paragraph II of this section that corporation is to pay upon dissolution refers to claims that are reduced to dollars and cents, or can be reduced by the application of recognized principles. *In re Hitchcock Clinic, Inc.*, 127 N.H. 62, 499 A.2d 974, 1985 N.H. LEXIS 442 (1985). (Decided under prior law.)

293-A:14.07. Unknown Claims Against Dissolved Corporation.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice shall:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within 5 years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 5 years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under RSA 293-A:14.06;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to him.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part B

Administrative Dissolution

NOTES TO DECISIONS

Rights of former shareholders

Subparagraph I(c) of this section, governing continuance after dissolution, does not supplant the equitable rule that former shareholders succeed to the assets of a dissolved corporation. *Jenot v. White Mountain Acceptance Corp.*, 124 N.H. 701, 474 A.2d 1382, 1984 N.H. LEXIS 345 (1984). (Decided under prior law.)

Where dissolved corporation failed to foreclose a mortgage and enforce the promissory note secured by it during the three-year windup period provided in subparagraph I(c) of this section, the remedy of foreclosure was available to former principal stockholder of the corporation, if an action was brought within the twenty-year limitation period provided in RSA 508:2, and was not subject to other defenses, including laches, and the former stockholder's right to the mortgage and promissory note, acquired by operation of principles in equity, was no different than the right he would have acquired by assignment. *Jenot v. White Mountain Acceptance Corp.*, 124 N.H. 701, 474 A.2d 1382, 1984 N.H. LEXIS 345 (1984). (Decided under prior law.)

293-A:14.20. Grounds for Administrative Dissolution.

The secretary of state may administratively dissolve a corporation under RSA 293-A:14.21 if:

(1) The corporation for 2 consecutive years does not pay within 60 days after they are due any franchise fees or penalties imposed by this chapter or other law;

(2) The corporation for 2 consecutive years does not deliver its annual report to the secretary of state within 60 days after it is due;

(3) The corporation is without a registered agent or registered office in this state for 60 days or more;

(4) The corporation does not notify the secretary of state within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its

registered office has been discontinued; or

(5) The corporation's period of duration stated in its articles of incorporation expires.

Source.

1992, 255:1.1993, 344:11, eff. July 1, 1993.

Amendments

—1993. Subparagraph (1): Substituted “fees” for “taxes” following “franchise”.

293-A:14.21. Procedure for and Effect of Administrative Dissolution.

(a) If the secretary of state determines that one or more grounds exist under RSA 293-A:14.20 for dissolving a corporation, the secretary of state shall administratively dissolve the corporation by mailing a notice of dissolution to the corporation at its principal address as listed in the records of the secretary of state. Such notice shall recite the grounds for dissolution and effective date, together with an application for reinstatement and shall at the same time give notice to the department of revenue administration, but such notice shall not constitute written or published notice to claimants otherwise required under RSA 293-A:14.06 or RSA 293-A:14.07.

(b) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under RSA 293-A:14.05 and notify claimants under RSA 293-A:14.06 and 293-A:14.07.

(c) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

(d) The secretary of state shall not permit any other individual, corporation, or other business entity to assume the same name or a similar name, of a corporation administratively dissolved under this section, or any trade name registered by such corporation pursuant to RSA 349, for a period of 120 days following the notice of administrative dissolution without the written consent of such corporation.

Source.

1992, 255:1, eff. Jan. 1, 1993. 1999, 189:2, eff. Sept. 4, 1999. 2004, 248:10, eff. July 1, 2004. 2006, 316:3, eff. July 1, 2006.

Amendments

—2006. Paragraph (a): Deleted “signing and” preceding “mailing” in the first sentence.

—2004. Paragraph (d): Deleted “deceptively” preceding “similar name”.

—1999. Paragraph (a): Substituted “the secretary of state” for “he” preceding “shall administratively” and “as listed in the records of the secretary of state” for “that recites” following “principal address” in the first sentence, and added “such notice shall recite” preceding “the grounds” in the second sentence.

NOTES TO DECISIONS

Continuance

The supreme court will strictly construe subparagraph I(c) of this section, governing continuance of a dissolved corpora-

tion, and RSA 293-A:106, its companion statute preserving corporate rights and remedies during the windup period. *Jenot v. White Mountain Acceptance Corp.*, 124 N.H. 701, 474 A.2d 1382, 1984 N.H. LEXIS 345 (1984). (Decided under prior law.)

Subparagraph I(c) of this section, governing continuance after dissolution, exclusively controls matters concerning dissolved corporations. *Jenot v. White Mountain Acceptance Corp.*, 124 N.H. 701, 474 A.2d 1382, 1984 N.H. LEXIS 345 (1984). (Decided under prior law.)

Subparagraph I(c) of this section gave dissolved corporation three years after dissolution in which to foreclose a mortgage given to it and to enforce a promissory note secured by the mortgage, and to allow the dissolved corporation to commence a foreclosure action, after the expiration of the windup period, would contravene the acknowledged policy of subparagraph I(c) to insure that there is a definite point in time at which the existence of a corporation and the transaction of its business are terminated. *Jenot v. White Mountain Acceptance Corp.*, 124 N.H. 701, 474 A.2d 1382, 1984 N.H. LEXIS 345 (1984). (Decided under prior law.)

RESEARCH REFERENCES

ALR.

Liability of shareholders, directors, and officers where corporate business is continued after its dissolution. 72 A.L.R.4th 419.

293-A:14.22. Reinstatement Within 3 Years After Administrative Dissolution.

(a) A corporation administratively dissolved under RSA 293-A:14.21 may apply to the secretary of state for reinstatement within 3 years after the effective date of dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name or proposed name satisfies the requirements of RSA 293-A:4.01; and

(4) Contain a certificate from the New Hampshire department of revenue administration in accordance with RSA 77-A:18, III, and RSA 77-E:12, III, if such application is received by the secretary of state more than 120 days after the notice of administrative dissolution is mailed.

(b) If the secretary of state determines that the application contains the information required by subsection (a), that the information is correct, that the corporation name is available for registration, and that it is accompanied by the fee required in RSA 293-A:1.22(a)(7), the secretary of state shall cancel the notice of dissolution and prepare a notice of reinstatement that recites the determination and the effective date of reinstatement and mail said notice to the corporation. If the application for reinstatement included a change of name of the corporation, said notice shall set forth the change of name of the corporation, and said

notice shall constitute an amendment to the articles of incorporation.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

Source.

1992, 255:1. 1993, 350:27, eff. July 1, 1993. 1999, 189:3, 4, eff. Sept. 4, 1999.

Amendments

—1999. Inserted “within 3 years after” in the section catchline and rewrote the first sentence of par. (b).

—1993. Subparagraph (a)(4): Inserted “and RSA 77-E:12, III” following “RSA 77-A:18, III”.

Severability

—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

293-A:14.22-a. Late Reinstatement Hearing; Notice; Requirements.

(a) A corporation administratively dissolved under RSA 293-A:14.21 may apply to the secretary of state for late reinstatement if more than 3 years have expired since the effective date of dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name or proposed name satisfies the requirements of RSA 293-A:4.01;

(4) Contain a certificate from the New Hampshire department of revenue administration in accordance with RSA 77-A:18, III, and RSA 77-E:12, III;

(5) Contain a statement asserting that no lawsuits are pending against the corporation;

(6) Contain a statement explaining the reason that reinstatement is being requested;

(7) Include all of the annual report fees and annual franchise fees, if any, for each year since the date of dissolution; and

(8) Contain a statement from the commissioner of the department of employment security showing that to the best of the commissioner's knowledge, as of the date of the statement, such corporation has paid all of its contributions or that it was not liable for any contributions, or that it has made adequate provisions, with such surety as shall be satisfactory to the future payment of any contributions.

(b) If the secretary of state determines that the application contains the information required by subsection (a), and that the corporation name is available for registration, and that it is accompanied by the fee required in RSA 293-A:1.22(a)(13), the secretary of state shall

schedule a public hearing on the late reinstatement. The public hearing shall be held before the secretary of state, or designee and the attorney general, or designee. Any interested party shall have the right to testify at a late reinstatement hearing. Late reinstatement hearings shall be conducted twice a year, on April 1 and September 1. If any such date falls upon a Saturday, Sunday, or legal holiday, the hearing shall be held on the first business day after each date. An application for late reinstatement must be received at least one month prior to a hearing date in order to be scheduled for that date.

(c) Notice of the late reinstatement hearing shall be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located. The notice shall:

- (1) Clearly state the reason for the hearing.
- (2) State the date, time, location of the hearing.

(3) Indicate that all interested parties are encouraged to attend or submit written comments within one week of the hearing.

(4) Include the mailing address of the secretary of state.

(d) If, after the public hearing, the secretary of state, in conjunction with the attorney general, determines that the information submitted in the application for late reinstatement is correct and that the corporation should be reinstated, the secretary of state shall cancel the notice of dissolution and prepare a notice of reinstatement that recites the determination and the effective date of reinstatement and mail said notice to the corporation.

(e) If the application for reinstatement included a change of name of the corporation, the notice shall set forth the change of name of the corporation and the fee required pursuant to RSA 293-A:1.22(a)(2), and the notice shall constitute an amendment to the articles of incorporation. If the application for reinstatement included a change of the registered agent, the notice shall set forth the name of the new registered agent and the fee required pursuant to RSA 293-A:1.22(b)(5).

(f) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(g) Except for provisions and requirements set forth in this section, late reinstatement hearings shall be subject to RSA 421-B:26-a.

Source.

1999, 189:5, eff. Sept. 4, 1999.

293-A:14.23. Appeal From Denial of Reinstatement.

(a) If the secretary of state denies a corpora-

tion's application for reinstatement following administrative dissolution, he shall mail the corporation a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the superior court within 30 days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Part C

Judicial Dissolution

293-A:14.30. Grounds for Judicial Dissolution.

The superior court may dissolve a corporation:

(a) In a proceeding by the attorney general if it is established that:

(i) The corporation obtained its articles of incorporation through fraud; or

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law.

(b) In a proceeding by a shareholder if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

(ii) The shareholders are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired.

(iii) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal or fraudulent.

(iv) An agreement under the provisions of RSA 293-A:7.32(a)(7) binding on all the shareholders so provides.

(c) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment re-

turned unsatisfied, and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Dissolution grounds
Right to elect

Dissolution grounds

Trial court did not err in ordering that closely-held corporation be dissolved, as sufficient evidence in the record showed that a ground for dissolution existed, namely, that the shareholders were deadlocked in voting power and were unable to elect successors to directors whose terms had expired. *Bendetson v. Killarney, Inc.*, 154 N.H. 637, 913 A.2d 756, 2006 N.H. LEXIS 208 (2006).

Right to elect

While the second businessman had the right to elect to purchase the first businessman's shares in a closely-held corporation because the first businessman had filed for the judicial dissolution of it, the trial court was authorized to set aside the election on equitable grounds, which it did, and the fact that the second businessman made the election did not operate as an automatic stay on the judicial dissolution proceeding, which could go forward. *Bendetson v. Killarney, Inc.*, 154 N.H. 637, 913 A.2d 756, 2006 N.H. LEXIS 208 (2006).

293-A:14.31. Procedure for Judicial Dissolution.

(a) Venue for a proceeding by the attorney general to dissolve a corporation lies in Merrimack county. Venue for a proceeding brought by any other party named in RSA 293-A:14.30 lies in the county where a corporation's principal office, or, if none in this state, its registered office, is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within 10 days of the commencement of a proceeding under RSA 293-A:14.30(b), to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities exchange, the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase

the petitioner's shares under RSA 293-A:14.34 and accompanied by a copy of RSA 293-A:14.34.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Construction with other law

Phrase "entitled to avoid" in RSA 293-A:14.31(d) does not mean that electing parties have an unqualified right to purchase the petitioning shareholder's stock and that such election when timely made is irrevocable absent the electing party requesting the court to set aside the election. Nothing in the notice provision grants the electing party an unassailable right to elect; rather, it simply informs shareholders of whatever election rights exist under RSA 293-A:14.34(a), and the election provision renders the electing party's right to elect subject to the trial court's authority to set aside the election when equity so requires. *Bendetson v. Killarney, Inc.*, 154 N.H. 637, 913 A.2d 756, 2006 N.H. LEXIS 208 (2006).

RESEARCH REFERENCES

ALR.

Liability of shareholders, directors, and officers where corporate business is continued after its dissolution.72 A.L.R.4th 419.

293-A:14.32. Receivership or Custodianship.

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver:

(i) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court;

(ii) May sue and defend his own name as receiver of the corporation in all courts of this state.

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:14.33. Decree of Dissolution.

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in RSA 293-A:14.30 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it and at the same time shall mail notice of such decree upon the department of revenue administration, but such notice shall not constitute written or published notice to claimants otherwise required under RSA 293-A:14.06 or RSA 293-A:14.07.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with RSA 293-A:14.05 and the notification of claimants in accordance with RSA 293-A:14.06 and 293-A:14.07.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:14.34. Election to Purchase in Lieu of Dissolution.

(a) In a proceeding under RSA 293-A:14.30(b) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable, unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under RSA 293-A:14.30(b) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all share-

holders other than the petitioner. The notice shall state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and shall advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate shall file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders the proceeding under RSA 293-A:14.30(b) shall not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his shares, unless the court determines that it would be equitable to the corporation and the shareholders other than the petitioner to permit such discontinuance, settlement, sale, or other disposition.

(c) If, within 60 days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c), the court, upon application of any party, shall stay the RSA 293-A:14.30(b) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under RSA 293-A:14.30(b) was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed.

(f) Upon entry of an order under subsections (c) or (e), the court shall dismiss the petition to dissolve the corporation under RSA 293-A:14.30, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e), shall be made within 10 days after the date the order becomes final, unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to RSA 293-A:14.02 and RSA 293-A:14.03, which articles shall then be adopted and filed within 50 days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of RSA 293-A:14.05 through 293-A:14.07 and the order entered pursuant to subsection (e) shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsections (c) or (e), other than an award of fees and expenses pursuant to subsection (e) is subject to the provisions of RSA 293-A:6.40.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

1. Construction with other law
2. Effect of election on dissolution
3. Set aside power

1. Construction with other law

Phrase "entitled to avoid" in RSA 293-A:14.31(d) does not mean that electing parties have an unqualified right to purchase the petitioning shareholder's stock and that such election when timely made is irrevocable absent the electing party requesting the court to set aside the election. Nothing in the notice provision grants the electing party an unassailable right to elect; rather, it simply informs shareholders of whatever election rights exist under RSA 293-A:14.34(a), and the election provision renders the electing party's right to elect subject to the trial court's authority to set aside the election when equity so requires. *Bendetson v. Killarney, Inc.*, 154 N.H. 637, 913 A.2d 756, 2006 N.H. LEXIS 208 (2006).

2. Effect of election on dissolution

While the second businessman had the right to elect to purchase the first businessman's shares in the closely-held corporation because the first businessman had filed for the judicial dissolution of it, the trial court was authorized to set aside the election on equitable grounds, which it did, and the fact that the second businessman made the election did not operate as an automatic stay on the judicial dissolution proceeding, which could go forward. *Bendetson v. Killarney, Inc.*, 154 N.H. 637, 913 A.2d 756, 2006 N.H. LEXIS 208 (2006).

3. Set aside power

While the second businessman had the right to elect to purchase the first businessman's shares in a closely-held

corporation because the first businessman had filed for the judicial dissolution of it, the trial court was authorized to set aside the election on equitable grounds, namely that the second businessman's election to purchase the shares in the closely held corporation would give him an unfair advantage with respect to his position in a limited partnership of which the closely held corporation was sole general partner and would interfere with the first businessman's ability to dissolve the limited partnership. *Bendetson v. Killarney, Inc.*, 154 N.H. 637, 913 A.2d 756, 2006 N.H. LEXIS 208 (2006).

Part D

Miscellaneous

293-A:14.40. Deposit With State Treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and be reported as unclaimed property and be held subject to the provisions of RSA 471-C.

Source.

1992, 255:1, eff. Jan. 1, 1993. 1998, 150:5, eff. Aug. 7, 1998.

Amendments

—1998. Rewritten to the extent that a detailed comparison would be impracticable.

Foreign Corporations

Part A

Certificate of Authority

NOTES TO DECISIONS

1. Purpose
2. Law governing
3. Jurisdiction—Minimum contacts
4. —Constitutional limitations
5. —Factors considered
6. —Relation of contacts to cause of action
7. —Situs of injuries
8. —Inconvenience
9. —Burden of proof
10. —Evidence
11. —Particular cases
12. Contracts—Generally
13. —Performance
14. —Particular cases
15. Service of process
16. Successor-in-interest

1. Purpose

It is the objective of this section to allow the exercise of jurisdiction over foreign corporations to the full extent of the constitutional limit. *Dustin v. Cruise Craft, Inc.*, 487 F. Supp. 67, 1980 U.S. Dist. LEXIS 10668 (D.N.H. 1980). (Decided under prior law.)

2. Law governing

The question whether a foreign corporation is doing business within the state and therefore liable in trustee process in the same manner as a domestic corporation is one of federal law. *Grace v. Procter & Gamble Co.*, 95 N.H. 74, 57 A.2d 619, 1948 N.H. LEXIS 183 (1948). (Decided under prior law.)

3. Jurisdiction—Minimum contacts

Due process does not require plaintiff to have minimum contacts with the forum state before permitting that state to assert personal jurisdiction over a nonresident

defendant. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790, 1984 U.S. LEXIS 40 (1984). (Decided under prior law.)

4. —Constitutional limitations

This section is to be broadly construed and jurisdiction over foreign corporations is to be allowed to the full extent of constitutional limits. *United States ex rel. LaValley v. First Nat'l Bank*, 625 F. Supp. 591, 1985 U.S. Dist. LEXIS 12480 (D.N.H. 1985). (Decided under prior law.)

This section authorizes service of process on nonresidents whenever permitted by the due process clause of the United States Constitution. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790, 1984 U.S. LEXIS 40 (1984). (Decided under prior law.)

This section allows the exercise of jurisdiction over foreign corporations to the full extent of the constitutional limit. *Papafagos v. Fiat Auto, S.p.A.*, 568 F. Supp. 692, 1983 U.S. Dist. LEXIS 14820 (D.N.H. 1983). (Decided under prior law.)

This section allows the exercise of jurisdiction over foreign corporations to the full extent of the constitutional limit. *Cove-Craft Indus., Inc. v. B.L. Armstrong Co.*, 120 N.H. 195, 412 A.2d 1028, 1980 N.H. LEXIS 254 (1980). (Decided under prior law.)

To be within the constitutional limit, jurisdiction under this section must be reasonable from the point of view of New Hampshire's interest in the litigation and must be consistent with the principles of fair play and substantial justice; thus, the court must support a finding of jurisdiction with considerations regarding fairness to the foreign defendant, to the plaintiff, and to the state of New Hampshire and its interests in having the matter litigated in New Hampshire. *Dustin v. Cruise Craft, Inc.*, 487 F. Supp. 67, 1980 U.S. Dist. LEXIS 10668 (D.N.H. 1980). (Decided under prior law.)

Objective of this section is to allow the exercise of jurisdiction over foreign corporations to the full extent of the constitutional limit, and this limit is met if the exercise of jurisdiction is reasonable and is consistent with the principles of fair play and substantial justice. *Engineering Assocs. v. B & L Liquidating Corp.*, 115 N.H. 508, 345 A.2d 900, 1975 N.H. LEXIS 349 (1975). (Decided under prior law.)

5. —Factors considered

In determining whether jurisdiction may be exercised over a foreign corporation, a court must determine whether the criteria of this section are met before federal due process issues are addressed. *Omni Hotels Mgt. Corp. v. Round Hill Devs. Ltd.*, 675 F. Supp. 745, 1987 U.S. Dist. LEXIS 11700 (D.N.H. 1987). (Decided under prior law.)

Under this section, the initial inquiry is whether the statutory requirements of jurisdiction have been met; if so, inquiry then turns to whether defendant's contacts with the state are sufficient to satisfy the requirements of due process. *Papafagos v. Fiat Auto, S.p.A.*, 568 F. Supp. 692, 1983 U.S. Dist. LEXIS 14820 (D.N.H. 1983). (Decided under prior law.)

Under this section, a defendant's contacts with New Hampshire must be such that the assertion of jurisdiction comports with traditional notions of fair play and substantial justice. *Papafagos v. Fiat Auto, S.p.A.*, 568 F. Supp. 692, 1983 U.S. Dist. LEXIS 14820 (D.N.H. 1983). (Decided under prior law.)

In determining whether a foreign corporation is amenable to suit in New Hampshire, the question of whether it had sufficient contacts with the state is considered only where it is first determined that the requirements of this section regarding in personam jurisdiction have been met. *Cove-Craft Indus., Inc. v. B.L. Armstrong Co.*, 120 N.H. 195, 412 A.2d 1028, 1980 N.H. LEXIS 254 (1980). (Decided under prior law.)

6. —Relation of contacts to cause of action

Plaintiffs' extremely limited contacts with the state were sufficient to support jurisdiction over a nonresident corporation carrying on a part of its general business in New Hampshire when the cause of action arose of the very activity being conducted, in part, in New Hampshire. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790, 1984 U.S. LEXIS 40 (1984). (Decided under prior law.)

7. —Situs of injuries

The specific language of this section gave the federal district court jurisdiction over the person of defendants, who were out-of-state manufacturers of an airplane, in action resulting out of crash of such airplane in this state. *Gill v. Fairchild Hiller Corp.*, 312 F. Supp. 916, 1970 U.S. Dist. LEXIS 12403 (D.N.H. 1970). (Decided under prior law.)

8. —Inconvenience

In an action to recover commissions allegedly earned by a domestic corporation under a sales representative contract with foreign corporation, which by its terms was to be performed in part in this state and in part outside, in which action there was no showing that requiring foreign corporation to defend itself in this state would cause it serious inconvenience, subjecting foreign corporation to jurisdiction within this state would not violate notions of justice and fairness required by due process. *Engineering Assocs. v. B & L Liquidating Corp.*, 115 N.H. 508, 345 A.2d 900, 1975 N.H. LEXIS 349 (1975). (Decided under prior law.)

9. —Burden of proof

Plaintiff, to gain in personam jurisdiction over defendant under this section solely on basis of an allegation that defendant committed a tort which occurred in this state, was required to present only a prima facie showing that the tort occurred here and did not have to prove by preponderance of the evidence that it occurred here. *Dustin v. Cruise Craft, Inc.*, 487 F. Supp. 67, 1980 U.S. Dist. LEXIS 10668 (D.N.H. 1980). (Decided under prior law.)

10. —Evidence

In tort action grounded in drowning of plaintiff's decedent in boat accident, where plaintiff presented evidence sufficient on its face to establish location of the accident in New Hampshire, in personam jurisdiction over foreign defendant maker of the boat was obtained and motion to dismiss for want of jurisdiction would be denied; and contradictory evidence that the boat and the body of another person, who had been in it, were found in Maine was insufficient to show lack of jurisdiction under this section. *Dustin v. Cruise Craft, Inc.*, 487 F. Supp. 67, 1980 U.S. Dist. LEXIS 10668 (D.N.H. 1980). (Decided under prior law.)

11. —Particular cases

Where New Hampshire corporation's allegations of civil conspiracy, mail fraud and RICO violations all involved conduct by individual defendants, working with and for nonresident corporate defendants, in New Hampshire, corporate defendants committed these violations at least in part in New Hampshire through the conduct of individual defendants. *Delta Educ., Inc. v. Langlois*, 719 F. Supp. 42, 1989 U.S. Dist. LEXIS 9226 (D.N.H. 1989). (Decided under prior law.)

Where nonresident corporate defendants used individual defendants, in New Hampshire, as part of their conduct directed at plaintiff New Hampshire corporation, and plaintiff alleged intentional interference with its relations with third parties, which would be expected to cause injury to plaintiff in New Hampshire, even without a physical presence here, corporate defendants' conduct was such that they could reasonably anticipate being haled into court in New Hampshire. *Delta Educ., Inc. v. Langlois*, 719 F. Supp. 42, 1989 U.S. Dist. LEXIS 9226 (D.N.H. 1989). (Decided under prior law.)

In action against Massachusetts professional corporation, alleging injury as a result of the improper handling of a Massachusetts cause of action in a Massachusetts court, where the defendant firm had no agents in New Hampshire; no member of the firm was a member of the New Hampshire Bar; the firm solicited no business in New Hampshire, and did not engage in practice in the courts of that state; and the firm owned no property in New Hampshire, the fact that the firm knew of the client's residence in New Hampshire and that the effects of the firm's alleged malpractice were felt in New Hampshire were not sufficient to establish in personam jurisdiction over the defendant firm under this section. *Kowalski v. Doherty, Wallace, Pillsbury & Murphy*, 787 F.2d 7, 1986 U.S. App. LEXIS 23401 (1st Cir.

1986).(Decided under prior law.)

Where foreign bank had structured loan agreement for, and contracted with, New Hampshire business corporation in the state of New Hampshire, the bank was doing business in New Hampshire within the meaning of this section so as to confer in personam jurisdiction on the federal district court for New Hampshire in an action on behalf on the United States to recover sums paid under a loan guarantee arising out of the loan agreement between the foreign bank and the New Hampshire business corporation. *United States ex rel. LaValley v. First Nat'l Bank*, 625 F. Supp. 591, 1985 U.S. Dist. LEXIS 12480 (D.N.H. 1985).(Decided under prior law.)

Where the activities within New Hampshire of a foreign bank consisted of soliciting and servicing credit card accounts; obtaining and servicing commercial and consumer loan customers; owning automatic teller terminals and contracting with financial and retail establishments within the state for the operation and maintenance of those terminals; acting as co-manager of a state bond issue; and providing financial advice to communities and public entities within the state, the magnitude of the business contracts with New Hampshire were such that the exercise of in personam jurisdiction by the federal district court in New Hampshire pursuant to this section did not offend "traditional notions of fair play and substantial justice" as required by the due process clause of the United States Constitution. *United States ex rel. LaValley v. First Nat'l Bank*, 625 F. Supp. 591, 1985 U.S. Dist. LEXIS 12480 (D.N.H. 1985).(Decided under prior law.)

Where a tort was committed in part in New Hampshire by the delivery of a defectively manufactured vehicle therein, the requirements of this section with reference to personal jurisdiction had been met. *Papafagos v. Fiat Auto, S.p.A.*, 568 F. Supp. 692, 1983 U.S. Dist. LEXIS 14820 (D.N.H. 1983).(Decided under prior law.)

12. Contracts—Generally

State has an important interest in protecting the rights of its residents under contracts entered into with foreign individuals and foreign corporations to insure the orderly and efficient transaction of commerce. *Engineering Assocs. v. B & L Liquidating Corp.*, 115 N.H. 508, 345 A.2d 900, 1975 N.H. LEXIS 349 (1975).(Decided under prior law.)

By entering into a contract with a domestic corporation, foreign corporation purposefully availed itself of the privilege of conducting business within this state, thus invoking the benefit and protection of its laws. *Engineering Assocs. v. B & L Liquidating Corp.*, 115 N.H. 508, 345 A.2d 900, 1975 N.H. LEXIS 349 (1975).(Decided under prior law.)

13. —Performance

In determining whether a contract is to be performed in whole or in part by either party in New Hampshire, actual performance is not a dispositive factor; if the agreement contemplates that duties will be performed or obligations incurred in New Hampshire, a contractual breach which prevents performance will not preclude the assertion of personal jurisdiction. *Omni Hotels Mgt. Corp. v. Round Hill Devs. Ltd.*, 675 F. Supp. 745, 1987 U.S. Dist. LEXIS 11700 (D.N.H. 1987).(Decided under prior law.)

The performance of any part of a contract in New Hampshire by either the domestic or the foreign party renders this section applicable to the foreign corporation. *Weld Power Indus., Inc. v. C.S.I. Technologies, Inc.*, 124 N.H. 121, 467 A.2d 568, 1983 N.H. LEXIS 366 (1983).(Decided under prior law.)

The performance of any part of a contract in New Hampshire, by either party to that contract, renders this section applicable to both. *Cove-Craft Indus., Inc. v. B.L. Armstrong Co.*, 120 N.H. 195, 412 A.2d 1028, 1980 N.H. LEXIS 254 (1980).(Decided under prior law.)

Applicability of this section does not depend upon performance on the part of the defendant in New Hampshire, but may rest upon performance in New Hampshire by any party to the contract. *Town of Haverhill v. City Bank & Trust Co.*, 119 N.H. 409, 402 A.2d 185, 1979 N.H. LEXIS 314 (1979).(Decided under prior law.)

Fact that sales for which foreign corporation owed commissions to domestic corporation did not occur in this state, did not preclude the jurisdiction by this state, if as alleged, they were connected with a contract be performed in part within

this state. *Engineering Assocs. v. B & L Liquidating Corp.*, 115 N.H. 508, 345 A.2d 900, 1975 N.H. LEXIS 349 (1975).(Decided under prior law.)

14. —Particular cases

Where defendant, a foreign corporation, contracted with plaintiff, a domestic corporation, to sell the plaintiff certain items f.o.b. California, the activities of the parties in relation to the contract in question, including plaintiff's acceptance of the goods in New Hampshire, rendered this section applicable to the defendant. *Weld Power Indus., Inc. v. C.S.I. Technologies, Inc.*, 124 N.H. 121, 467 A.2d 568, 1983 N.H. LEXIS 366 (1983).(Decided under prior law.)

Where plaintiff became defendant's New England sales representative and was to solicit orders, sell his products, advertise and advise him of all major accounts in plaintiff's jurisdiction, and where sales acknowledgments and invoices concerning orders and resulting commissions were mailed into this state, and commissions were to be paid at special rate for sales made in plaintiff's territory but not solicited by him, there was a contract under this section. *Engineering Assocs. v. B & L Liquidating Corp.*, 115 N.H. 508, 345 A.2d 900, 1975 N.H. LEXIS 349 (1975).(Decided under prior law.)

15. Service of process

A foreign corporation admitted to do business in the state may be summoned as trustee of its nonresidents debtor by service upon the secretary of state. *Shiatte v. Singer Mfg. Co.*, 81 N.H. 294, 125 A. 429, 1924 N.H. LEXIS 34 (1924).(Decided under prior law.)

16. Successor-in-interest

Foreign corporation, which was successor-in-interest to New Hampshire manufacturer which allegedly released hazardous waste onto property later purchased by plaintiff, was amenable to jurisdiction under this section in action to recover costs related to removing the waste. *Mesiti v. Microdot, Inc.*, 739 F. Supp. 57, 1990 U.S. Dist. LEXIS 6964 (D.N.H. 1990).(Decided under prior law.)

293-A:15.01. Authority to Transact Business Required.

(a) A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

(1) maintaining, defending, or settling any proceeding;

(2) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, or registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining order, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(9) owning, without more, real or personal property;

(10) conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;

(11) transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

(d) Nothing in this section shall be construed so as to preclude a determination that a foreign corporation is carrying on business activity within this state within the meaning of RSA 77-A:1, XII.

(e) Any so-called Massachusetts trust or business trust established by law of any other state, desiring to do business in this state, shall be deemed to be a foreign corporation and shall be required to register under and comply with the provisions of this chapter.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:15.02. Consequences of Transacting Business Without Authority.

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts of any years during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and franchise fees which would have been imposed by this subdivision upon the corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this subdivision and thereafter filed all required reports. The corporation shall also be liable for any penalties imposed by this subdivision for failure to pay such fees and franchise fees. The attorney gen-

eral shall bring proceedings to recover all amounts due under the provisions of this section.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

1. Nature of incapacity
2. Past noncompliance
3. Pleading
4. Proof of incapacity
5. Second action
6. Application of section

1. Nature of incapacity

This section's denial of access to the courts of the state applies only to actions by corporations which arise out of intrastate transactions falling within the purview of this chapter. *R.C. Allen Bus. Machs., Inc. v. Acres*, 111 N.H. 269, 281 A.2d 162, 1971 N.H. LEXIS 174 (1971). (Decided under prior law.)

Incapacity to sue under this section is not a defense to the merit of a corporation's claims, but only a matter of abatement of actions until this chapter is complied with. *R.C. Allen Bus. Machs., Inc. v. Acres*, 111 N.H. 269, 281 A.2d 162, 1971 N.H. LEXIS 174 (1971). (Decided under prior law.)

2. Past noncompliance

Corporation could maintain action upon cause of action which accrued prior to its registration as a foreign corporation. *Peerless Corp. v. Chin*, 112 N.H. 3, 287 A.2d 611, 1972 N.H. LEXIS 130 (1972). (Decided under prior law.)

Noncompliance does not preclude a foreign corporation from maintaining an action after complying with the statute if the cause of action did not accrue until after such compliance. *People's Wet Wash Laundry Co. v. Dubeau*, 80 N.H. 544, 119 A. 706, 1923 N.H. LEXIS 60 (1923). (Decided under prior law.)

3. Pleading

Incapacity to sue under this section, unless it appears on the face of the declaration, is an affirmative defense which must be pleaded and proved by the defendant. *R.C. Allen Bus. Machs., Inc. v. Acres*, 111 N.H. 269, 281 A.2d 162, 1971 N.H. LEXIS 174 (1971). (Decided under prior law.)

There is no presumption that a corporation doing business in a state is doing so contrary to statutes such as this chapter, and corporations need not plead compliance therewith when bringing suit. *R.C. Allen Bus. Machs., Inc. v. Acres*, 111 N.H. 269, 281 A.2d 162, 1971 N.H. LEXIS 174 (1971). (Decided under prior law.)

4. Proof of incapacity

To establish the affirmative defense of incapacity of a foreign corporation to sue because it failed to register, the defendant had to prove three factors: first, it had to prove that the transaction out of which the action arose was an intrastate transaction; second, the transaction must have constituted "doing business" within the meaning of the chapter; third, the defendant had to show that the plaintiff was an unregistered foreign corporation. *Guyette v. C & K Dev. Co.*, 122 N.H. 913, 451 A.2d 1318, 1982 N.H. LEXIS 491 (1982). (Decided under prior law.)

5. Second action

Dismissal of action by corporation on ground corporation was not registered as a foreign corporation was not a bar to subsequent action on same cause of action brought after corporation registered, for there was no trial on the merits in the dismissed action. *Peerless Corp. v. Chin*, 112 N.H. 3, 287

A.2d 611, 1972 N.H. LEXIS 130 (1972). (Decided under prior law.)

6. Application of section

Where foreign corporation divested itself of right to enforce note by transferring its interest in note to a newly formed New Hampshire corporation, it was an abuse of trial court's discretion to deny foreign corporation's motion for voluntary nonsuit without prejudice after it no longer had any rights to enforce. *Cadle Co. v. Proulx*, 143 N.H. 413, 725 A.2d 670, 1999 N.H. LEXIS 19 (1999).

Unregistered foreign incorporated customs broker that conducted no activities in this state and had no office or representative here was not doing business within this state so as to come within the provisions of this chapter and could recover for customs duties paid on shipment of goods from Canadian firm on behalf of resident defendant. *F.W. Myers & Co. v. Piche*, 109 N.H. 357, 252 A.2d 427, 1969 N.H. LEXIS 157 (1969). (Decided under prior law.)

293-A:15.03. Application for Certificate of Authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application shall set forth:

(1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of RSA 293-A:15.06;

(2) the name of the state or country under whose law it is incorporated;

(3) its date of incorporation and period of duration;

(4) the street address of its principal office;

(5) the address of its registered office in this state and the name of its registered agent at that office; and

(6) the names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or document of similar import) duly authorized by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated, issued not more than 60 days before the application is received by the secretary of state.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Acceptance of articles of incorporation generally, see RSA 293-A:2.03.

Admission of foreign professional corporations, see RSA 294-A:25.

Application for certificate of authority by foreign professional corporation, see RSA 294-A:26.

Filing, service, copying and special fees, see RSA 293-A:1.22.

Registration of foreign nonprofit corporations, see RSA 292:5-b.

293-A:15.04. Amended Certificate of Authority.

(a) A foreign corporation authorized to transact business in this state shall obtain an

amended certificate of authority from the secretary of state if it changes:

(1) its corporate name;

(2) the period of its duration; or

(3) the state or country of its incorporation.

(b) The requirements of RSA 293-A:15.03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Fee for filing copy of amendment to articles of incorporation, see RSA 293-A:1.22.

293-A:15.05. Effect of Certificate of Authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

General powers of domestic corporations, see RSA 293-A:3.02.

293-A:15.06. Corporate Name of Foreign Corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of RSA 293-A:4.01, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) may add the word "corporation," "incorporated," or "limited," or the abbreviation "corp.," "inc.," or "ltd.," to its corporate name for use in this state; or

(2) may use an available fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of RSA 293-A:4.01, it may not

transact business in this state under the changed name until it adopts a name satisfying the requirements of subsection (a) and obtains an amended certificate of authority under RSA 293-A:15.04.

Source.

1992, 255:1, 1993, 344:12, eff. July 1, 1993.

Amendments

—1993. Deleted “company,” following “incorporated,” and “co.,” following “inc.,” in subpar. (a)(1), substituted “an available” for “a” following “may use” in subpar. (a)(2), deleted former subsecs.(b)-(d), redesignated former subsec.(e) as subsec.(b) and substituted “subsection (a)” for “RSA 293-A:4.01” following “requirements of” in that subsection.

Cross References.

Corporate names of domestic corporations, see RSA 293-A:4.01.

Registered names, see RSA 293-A:4.03.

Reserved names, see RSA 293-A:4.02.

NOTES TO DECISIONS

1. Rights of foreign corporations
2. Effect of prohibition

1. Rights of foreign corporations

A foreign corporation which was the first in the field is entitled to enjoin the use of the same name by a New Hampshire corporation; and its right to do so is not affected by the fact that the foreign corporation is not licensed to do business in the state. *Western Auto Supply Co. v. Western Auto Supply Co.*, 13 F. Supp. 525, 1936 U.S. Dist. LEXIS 1488 (D.N.H. 1936). (Decided under prior law.)

2. Effect of prohibition

Where, pursuant to this section, a foreign corporation was precluded from registering with the secretary of state under its correct name because its name was similar to the name of another corporation already doing business in the state, and, as a result the corporation registered under a shortened form of its name, the corporation was not required to change its name in the state of incorporation, since this section did not indicate what to do in such a case, and such a requirement would be unreasonable in the absence of a clear directive from the legislature. *Guyette v. C & K Dev. Co.*, 122 N.H. 913, 451 A.2d 1318, 1982 N.H. LEXIS 491 (1982). (Decided under prior law.)

293-A:15.07. Registered Office and Registered Agent of Foreign Corporation.

Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

- (1) a registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
 - (i) An individual who resides in this state and whose business office is identical with the registered office; or
 - (ii) A corporation organized or authorized under RSA 292, RSA 293-A, or 294-A whose business office is identical with the registered office; or
 - (iii) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or
 - (iv) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

Source.

1992, 255:1, eff. Jan. 1, 1993. 2004, 248:11, eff. July 1, 2004.

Amendments

—2004. Paragraph (2): Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Failure to appoint and maintain registered agent, see RSA 293-A:15.30.

Filing, service, copying and special fees, see RSA 293-A:1.22.

Service of process on foreign corporations, see RSA 293-A:15.10.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, “The New Limited Partnership Act and the Office of Securities Regulation,” see 29 N.H.B.J.11 (1987).

293-A:15.08. Change of Registered Office or Registered Agent of Foreign Corporation.

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- (1) its name;
- (2) the street address of its current registered office;
- (3) if the current registered office is to be changed, the street address of its new registered office;
- (4) the name of its current registered agent;
- (5) if the current registered agent is to be changed, the name of its new registered agent and the new agent’s written consent (either on the statement or attached to it) to the appointment; and
- (6) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign corporation for which he is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Failure to file statement of change of registered office and agent, see RSA 293-A:15.30.

Filing, service, copying and special fees, see RSA 293-A:1.22.

293-A:15.09. Resignation of Registered Agent of Foreign Corporation.

(a) The registered agent of a foreign corporation authorized to do business in this state may resign his agency appointment by signing and delivering to the secretary of state for filing the original and one exact or conformed copy of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) The secretary of state shall mail the copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:15.10. Service on Foreign Corporation.

(a) The registered agent appointed by a foreign corporation authorized to transact business in this state is the agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:

(1) has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) has withdrawn from transacting business in this state under RSA 293-A:15.20; or

(3) has had its certificate of authority revoked under RSA 293-A:15.31.

(c) Service is perfected under subsection (b) at the earliest of:

(1) the date the foreign corporation receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) five days after its deposit in the United States Mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Source.

1992, 255:1, eff. Jan. 1, 1993.

Cross References.

Service of process on foreign partnerships, see RSA 305-A:6-8.

Service of process on nonresident defendants generally, see RSA 510:4.

NOTES TO DECISIONS

- 0.5. Constitutionality
 1. Purpose
 2. Construction
 3. Construction with other laws
 4. Consent to jurisdiction
 5. Jurisdiction—Constitutional limitations
 6. —Factors considered
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 10. —Doing business
 11. —Situs of injuries
 12. —Lack of another forum
 13. —Insufficient contacts
 14. Objections to service
 15. Effect of service
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0.5. Constitutionality

This section includes no restriction upon scope of jurisdiction, and thus authorizes jurisdiction over unregistered foreign corporations to the full extent permitted by the United States Constitution; inquiry concerning exercise of jurisdiction therefore collapses into the single question of whether constitutional requirements of due process have been met. *Pelchat v. Sterilite Corp.*, 931 F. Supp. 939, 1996 U.S. Dist. LEXIS 10733 (D.N.H. 1996).

1. Purpose

New Hampshire places no constrictions on its in personam jurisdiction vis-a-vis foreign corporations; on the contrary it is the object of this section to exercise jurisdiction to the full extent of the constitutional limit. *Sanders Assocs. v. Galion Iron Works & Mfg. Co.*, 304 F.2d 915, 1962 U.S. App. LEXIS 4455 (1st Cir. 1962). (Decided under prior law.)

2. Construction

By allowing all foreign corporations, whether authorized to transact business in New Hampshire or not, to be served by registered or certified mail, Legislature expanded means by which foreign corporations may be served. *McClary v. Erie Engine & Mfg. Co.*, 856 F. Supp. 52, 1994 U.S. Dist. LEXIS 8449 (D.N.H. 1994).

The phrase "process, notice or demand required or permitted by law to be served on the corporation" in paragraph I of this section refers merely to lawful process, notice or demand. *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 1984 U.S. App. LEXIS 19919 (1st Cir. 1984). (Decided under prior law.)

The New Hampshire Supreme Court's interpretation of PL 187:1, a forerunner of this section, which provided that a foreign corporation seeking to do business in New Hampshire "appoint the secretary of state...to be its true and lawful attorney upon whom lawful process may be served," in its decision on *Nottingham v. Newmarket Manufacturing Co.*, 84 NH 419, 151 A 709, 1930 N.H. LEXIS 104 (1930), in which the court, despite the requirement that the process be "lawful," held that there was jurisdiction over a foreign corporation without inquiring into whether there was an alternate, authorized method of service, supports the view that this section is not limited to situations in which the legislature has provided an alternate method of service, particularly in light of the similarity of the terms "lawful" employed in PL 187:1 and "permitted by law" employed in this section. *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 1984 U.S. App. LEXIS 19919 (1st Cir. 1984). (Decided under prior law.)

The language of paragraph IV of this section, which provides that "nothing contained in this section shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law," indicates that when the legislature wished to restrict the applicability of this section to situations in which another statute authorized jurisdiction over foreign corporations, it did so in clear and unambiguous language; the legislature's failure to utilize this clear language when referring to the process that may be served on the registered agent indicates

that it did not intend to restrict service on the registered agent to situations in which other methods of service were authorized. *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 1984 U.S. App. LEXIS 19919 (1st Cir. 1984). (Decided under prior law.)

3. Construction with other laws

This section was the controlling long-arm statute, where defendant was a foreign corporation, incorporated for profit under the laws of Ohio. *Anderson v. Century Prods. Co.*, 943 F. Supp. 137, 1996 U.S. Dist. LEXIS 19740 (D.N.H. 1996).

Legislature's elimination of restrictive long-arm language contained in predecessor statute, and its provision for service of foreign corporations by mail, demonstrated that it intended this section to authorize jurisdiction over foreign corporations to the full extent allowed by federal law, and therefore if a court's exercise of personal jurisdiction over a foreign corporation is consistent with due process requirements of the Fourteenth Amendment, this section will authorize jurisdiction over that defendant. *McClary v. Erie Engine & Mfg. Co.*, 856 F. Supp. 52, 1994 U.S. Dist. LEXIS 8449 (D.N.H. 1994).

The phraseology in paragraph I of this section relating to service of an agent of "process...required or permitted by law to be served on the corporation" does not refer only to service of process which would be permissible under the long-arm statute, RSA 293-A:121. *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 1984 U.S. App. LEXIS 19919 (1st Cir. 1984). (Decided under prior law.)

Because of the similarity between the term "lawful" in RSA 293-A:121 and the phrase "permitted by law" in paragraph I of this section, it is likely that the New Hampshire legislature intended the two phrases to have the same meaning; the presence of a restriction in RSA 293-A:121 that is similar to the restriction contained in paragraph I of this section, therefore, provides evidence that a construction of this section which restricts its application to situation in which service would be permissible under RSA 293-A:121 is incorrect. *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 1984 U.S. App. LEXIS 19919 (1st Cir. 1984). (Decided under prior law.)

The fact that service of process on a corporation would not be permissible under the long-arm statute, RSA 293-A:121, does not mean that service on the registered agent of the corporation would therefore not be authorized under paragraph I of this section. *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 1984 U.S. App. LEXIS 19919 (1st Cir. 1984). (Decided under prior law.)

4. Consent to jurisdiction

Foreign corporation which maintained a registered agent in New Hampshire and failed to assert that it was beyond the scope of the agent's authority to accept service on its behalf consented to court's exercise of personal jurisdiction over it under paragraph I of this section. *Crosfield Hastech, Inc. v. Harris Corp.*, 672 F. Supp. 580, 1987 U.S. Dist. LEXIS 10302 (D.N.H. 1987). (Decided under prior law.)

Where litigation is causally connected to the defendant's acts in New Hampshire, and where New Hampshire has an interest in the litigation, this section is applicable, and a foreign corporation which has appointed a resident agent has authorized its agent to receive process in a case of that nature, and has thereby consented to jurisdiction in such a case. *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 1984 U.S. App. LEXIS 19919 (1st Cir. 1984). (Decided under prior law.)

5. Jurisdiction—Constitutional limitations

A California corporation was subject to personal jurisdiction in an action in New Hampshire alleging a breach of a contract pursuant to which the plaintiff transported a 127,000 pound liquid nitrogen tank with external piping that was manufactured in New Hampshire from New Hampshire to California since (1) the claim was based on unpaid fees for the transport of the tank which was purchased and shipped from New Hampshire, (2) the defendant contacted a New Hampshire corporation for the purchase of the tank and arranged for the shipment of the tank from New Hampshire, and (3) the plaintiff's interest in obtaining convenient and effective relief and the presence of key witnesses in New Hampshire supported the assertion of specific personal jurisdiction over the

defendant. *Robbins Motor Transp., Inc. v. U.S. Sea Launch Ltd. P'ship*, — F. Supp. 2d —, 2001 U.S. Dist. LEXIS 17259 (D.N.H. Oct. 11, 2001).

A foreign corporation was not entitled to have service upon it quashed as the plaintiff introduced sufficient evidence to make a prima facie showing that: (1) the claim underlying the litigation arose out of, or related to, the corporation's contacts with the forum; (2) the corporation's in-state activities represented a purposeful availment of the privilege of conducting activities in the state; and (3) the exercise of personal jurisdiction over the corporation would be reasonable. *Emery v. Wood Indus., Inc.*, — F. Supp. 2d —, 2001 U.S. Dist. LEXIS 12914 (D.N.H. Aug. 20, 2001).

RSA 293-A:15.10 authorizes jurisdiction to the extent permitted by the due process clause of the Constitution. *Patrick v. Massachusetts Port Auth.*, 141 F. Supp. 2d 180, 2001 U.S. Dist. LEXIS 5527 (D.N.H. 2001).

This section includes no restriction upon the scope of jurisdiction available under state law and thus authorizes jurisdiction over such entities to the full extent permitted by the United States Constitution. *Sawtelle v. Farrell*, 70 F.3d 1381, 1995 U.S. App. LEXIS 33724 (1st Cir. 1995).

Whether a defendant's activities in the forum state are sufficient to support personal jurisdiction in a particular case depends on the quality and nature of the activity in relation to the 293-A:15.10 fair and orderly administration of the laws which it was the purpose of the due process clause to insure; that clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations. *Glater v. Eli Lilly & Co.*, 744 F.2d 213, 1984 U.S. App. LEXIS 20563 (1st Cir. 1984). (Decided under prior law.)

In analysis of jurisdictional facts as they relate to this section, court would be guided by principles that the exercise of jurisdiction has to be reasonable from the standpoint of New Hampshire's interest in the litigation, and has to be consistent with principles of fair play and substantial justice; and in addition, the reach of this section may not be extended beyond what is permitted by the United States Constitution. *Centronics Data Computer Corp. v. Mannesmann, A. G.*, 432 F. Supp. 659, 1977 U.S. Dist. LEXIS 15477 (D.N.H. 1977). (Decided under prior law.)

This section reaches as far as due process will allow to protect the interest of New Hampshire citizens. *Seymour v. Parke, Davis & Co.*, 294 F. Supp. 1257, 1969 U.S. Dist. LEXIS 9228 (D.N.H. 1969). (Decided under prior law.)

Subsection (c) of this section authorizing secretary of state to accept service of process on any foreign corporation transacting business in this state exerts jurisdiction over foreign corporations to the full extent of the constitutional limit. *Roy v. North Am. Newspaper Alliance*, 106 N.H. 92, 205 A.2d 844, 1964 N.H. LEXIS 46 (1964). (Decided under prior law.)

6. —Factors considered

As a threshold requirement for subjecting a defendant foreign corporation to personal jurisdiction under a state statute such as this section, there must exist certain minimum contacts between the defendant and the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Glater v. Eli Lilly & Co.*, 744 F.2d 213, 1984 U.S. App. LEXIS 20563 (1st Cir. 1984). (Decided under prior law.)

The factors to be weighed in determining whether, for jurisdictional purposes, a defendant's contacts with New Hampshire meet the requirements of fair play called for by the due process clause include the quantity and nature of the contacts, their connection with the cause of action, and the interest of New Hampshire in protecting its citizens and whether that interest has been invoked in the proceeding at hand; and under the usual test the state must have sufficient contacts so that maintenance of the suit locally would not offend the traditional conception of fair play and substantial justice, the decision of which requires an inquiry into whether defendant could have reasonably anticipated that its activities would have an effect in New Hampshire. *Centronics Data Computer Corp. v. Mannesmann, A. G.*, 432 F. Supp. 659, 1977 U.S. Dist. LEXIS 15477 (D.N.H. 1977). (Decided under prior law.)

Court had jurisdiction of tort suit by plaintiff whose sole place of business was in New Hampshire where defendant was an alien corporation, had sent its agents into New Hampshire in furtherance of its interest in marketing its products (these contacts alone were insufficient to give jurisdiction), had substantial contacts with the United States as a whole, and New Hampshire had an interest in protecting its corporate citizens from torts such as the alleged conspiracy to violate antitrust laws, interfere with plaintiff's contractual relations, misappropriate plaintiff's trade secrets and defame plaintiff. *Centronics Data Computer Corp. v. Mannesmann, A. G.*, 432 F. Supp. 659, 1977 U.S. Dist. LEXIS 15477 (D.N.H. 1977). (Decided under prior law.)

In assessing jurisdictional contacts, for purpose of determining whether assertion of in personam jurisdiction over foreign corporation would violate due process, New Hampshire places heavy weight on the right of its citizens to institute local suit in quest of redress for injuries committed in the state. *Mulhern v. Holland America Cruises*, 393 F. Supp. 1298, 1975 U.S. Dist. LEXIS 12593 (D.N.H. 1975). (Decided under prior law.)

In cases under this section, courts should assess both qualitative and quantitative aspects of foreign corporation's jurisdictional contacts, whether extension of jurisdiction would violate judicial notions of fair play and substantial justice, and whether defendant could have reasonably anticipated that its activities would have effect in this state. *Grappone, Inc. v. Subaru of Am., Inc.*, 403 F. Supp. 123, 1975 U.S. Dist. LEXIS 15322 (D.N.H. 1975). (Decided under prior law.)

Where domestic corporation brought action for damages against foreign corporation, jurisdictional issue would be decided by federal district court guided by this state's interest in litigation and principles of fair play and justice. *Grappone, Inc. v. Subaru of Am., Inc.*, 403 F. Supp. 123, 1975 U.S. Dist. LEXIS 15322 (D.N.H. 1975). (Decided under prior law.)

Where, for four years prior to death, in New Hampshire, of person whose alleged wrongful death was sued for, defendant foreign corporation solicited sales from New Hampshire addresses, resulting in no sales, and had sold other products to independent dealers in New Hampshire, and very strong considerations relating to plaintiff New Hampshire resident, taking evidence, presence of other two defendants in New Hampshire, location of witnesses and site of accident pointed to New Hampshire as the proper place for trial, and defendant's activities were multi-state while decedent's were highly local, and New Hampshire law would govern, it was reasonable and consistent with due process to hold defendant subject to adjudicative jurisdiction of New Hampshire. *Roy v. Transairco, Inc.*, 112 N.H. 171, 291 A.2d 605, 1972 N.H. LEXIS 168 (1972). (Decided under prior law.)

7. —Relation of contacts to cause of action

Where a defendant has certain judicially cognizable ties to the forum state, consideration of fundamental importance in determining whether the exercise of personal jurisdiction is consistent with due process is whether the cause of action arises out of or is related to the defendant's contacts with the forum state: if the cause of action is related to the defendant's in-state activities, then "specific jurisdiction" may be found based on the relationship among the defendant, the forum, and the litigation; if the cause of action is unrelated to the defendant's in-state activities, the issue becomes one of "general" rather than "specific" jurisdiction, and although minimum contacts suffice in and of themselves for specific jurisdiction under *International Shoe*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed.95, 1945 U.S. LEXIS 1447, 161 A.L.R. 1057 (1945), the standard for general jurisdiction is considerably more stringent. *Glater v. Eli Lilly & Co.*, 744 F.2d 213, 1984 U.S. App. LEXIS 20563 (1st Cir. 1984). (Decided under prior law.)

Systematic and continuous solicitation of business in New Hampshire on behalf of a foreign corporation may subject it to the jurisdiction of the local courts if the cause of action asserted against it is related to such activity. *W.H. Elliott & Sons Co. v. E. & F. King & Co.*, 144 F. Supp. 401, 1956 U.S. Dist. LEXIS 2772 (D.N.H. 1956), vacated on other grounds, 243 F.2d 116, 1957 U.S. App. LEXIS 2905 (1st Cir. 1957), cert. denied, 355 U.S. 823, 78 S. Ct. 30, 2 L. Ed. 2d 38, 1957 U.S. LEXIS 413 (1957). (Decided under prior law.)

8. —Continuous and systematic contacts

Motion to dismiss was denied because a lessee showed that the court could exercise personal jurisdiction over a lessor under RSA 293-A:15.10 where agreements to provide flight services were negotiated by communications between California and New Hampshire, and the agreements showed an ongoing relationship between the parties in New Hampshire. *Private Jet Servs. Group v. Sky King, Inc.*, — F. Supp. 2d —, 2005 U.S. Dist. LEXIS 23368 (Oct. 11, 2005).

General jurisdiction may be found in the absence of a relationship between a nonresident defendant's contacts with the forum and the cause of action where the defendant engages in the "continuous and systematic" pursuit of general business activities in the forum state. *Glater v. Eli Lilly & Co.*, 744 F.2d 213, 1984 U.S. App. LEXIS 20563 (1st Cir. 1984). (Decided under prior law.)

9. —Effect of contacts

The defendant Rhode Island corporation was subject to personal jurisdiction in New Hampshire in connection with the sale by a subsidiary of the defendant of a laser positioning system to the plaintiff where the subsidiary solicited business from the plaintiff on at least 17 occasions over a period of somewhat more than one year, the plaintiff and the subsidiary entered into 11 separate contracts, and the subsidiary issued purchase orders to the plaintiff for the performance of the contracts by sending the purchase orders to the plaintiff's New Hampshire offices. *New World Techs., Inc. v. Adolf Meller Co.*, — F. Supp. 2d —, 2001 U.S. Dist. LEXIS 21247 (D.N.H. Dec. 14, 2001).

In deciding whether extension of jurisdiction over foreign corporation would violate judicial notions of fair play and substantial justice, New Hampshire inquires as to whether defendant could have reasonably anticipated that its activities would have an effect in this state. *Mulhern v. Holland America Cruises*, 393 F. Supp. 1298, 1975 U.S. Dist. LEXIS 12593 (D.N.H. 1975). (Decided under prior law.)

10. —Doing business

Defendant's motion to dismiss a patent infringement action for lack of personal jurisdiction was denied, since the company had sufficient minimum contacts with New Hampshire under the stream of commerce theory, where the company sold its product to catalogue and internet companies so that its product might be distributed to the market at large, including New Hampshire. *Braley v. Sportec Prods. Co.*, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 13567 (D.N.H. July 16, 2002).

Where importer of motor vehicles controlled essential business decisions and operations of distributor and control was sufficient to constitute doing business for jurisdictional purposes, qualitative impact of importer's jurisdictional contacts required finding that it was doing business in this state within meaning of this section. *Grappone, Inc. v. Subaru of Am., Inc.*, 403 F. Supp. 123, 1975 U.S. Dist. LEXIS 15322 (D.N.H. 1975). (Decided under prior law.)

In an action for libel by a resident of this state based on an alleged defamatory column distributed for publication in this state by a nonresident corporation and published in a newspaper here, although the defendant had no office or employees stationed in this state and was not registered to do business here, it was reasonable and consistent with due process to subject the defendant to the judicial and legislative jurisdiction of this state pursuant to subsection (c) of this section providing for substituted service upon the secretary of state. *Roy v. North Am. Newspaper Alliance*, 106 N.H. 92, 205 A.2d 844, 1964 N.H. LEXIS 46 (1964). (Decided under prior law.)

Facts showing that through manufacturers' distributorship agreement, distributor could not sell to federal or state highway departments without manufacturers' approval, could not sell outside its territory, could not export equipment, could not sell other equipment performing similar functions, had to inspect and service equipment sold, had to maintain a certain inventory, had to follow prices and discounts established by manufacturer and had to display manufacturers' signs were sufficient to compel the conclusion that manufacturer was "doing business" within New Hampshire and should be subject to service of process and amenable to claims related and unrelated to the "mainstream" of its commercial

intercourse within the state. *Sanders Assocs. v. Galion Iron Works & Mfg. Co.*, 304 F.2d 915, 1962 U.S. App. LEXIS 4455 (1st Cir. 1962). (Decided under prior law.)

Question of whether foreign corporation was doing business in this state so as to subject it to jurisdiction of courts of this state is to be determined under fair play and substantial justice rule rather than theories of implied consent and corporate presence. *Benson v. Brattleboro Retreat*, 103 N.H. 28, 164 A.2d 560, 1960 N.H. LEXIS 6, 84 A.L.R.2d 409 (1960), cert. denied, 365 U.S. 870, 81 S. Ct. 905, 5 L. Ed. 2d 861, 1961 U.S. LEXIS 1419 (1961). (Decided under prior law.)

Generally, holding of meetings of directors or officers of a foreign corporation in state does not constitute "doing business" by corporation in state and does not give a court of state jurisdiction over corporation, in absence of a statute providing otherwise. *Benson v. Brattleboro Retreat*, 103 N.H. 28, 164 A.2d 560, 1960 N.H. LEXIS 6, 84 A.L.R.2d 409 (1960), cert. denied, 365 U.S. 870, 81 S. Ct. 905, 5 L. Ed. 2d 861, 1961 U.S. LEXIS 1419 (1961). (Decided under prior law.)

Foreign corporation organized for purpose of caring for mentally ill was held not to have been doing business in this state, and hence no jurisdiction was acquired over an action brought here for false imprisonment allegedly committed in foreign state, where only acts alleged to have occurred in this state were the sale of a tract of undeveloped property to state of New Hampshire before cause of action arose and holding of two trustees' meetings here for convenience of a disabled member of the board. *Benson v. Brattleboro Retreat*, 103 N.H. 28, 164 A.2d 560, 1960 N.H. LEXIS 6, 84 A.L.R.2d 409 (1960), cert. denied, 365 U.S. 870, 81 S. Ct. 905, 5 L. Ed. 2d 861, 1961 U.S. LEXIS 1419 (1961). (Decided under prior law.)

Registration of a product under the New Hampshire Economic Poisons Law in order that mixtures containing it could be legally sold in the state, and promotional activities carried on in New Hampshire by the producer, operates to subject to service of process one who sold the product to a manufacturer in another state who used it in paint purchased by a New Hampshire user. *W.H. Elliott & Sons Co. v. E. & F. King & Co.*, 144 F. Supp. 401, 1956 U.S. Dist. LEXIS 2772 (D.N.H. 1956), vacated on other grounds, 243 F.2d 116, 1957 U.S. App. LEXIS 2905 (1st Cir. 1957), cert. denied, 355 U.S. 823, 78 S. Ct. 30, 2 L. Ed. 2d 38, 1957 U.S. LEXIS 413 (1957). (Decided under prior law.)

A foreign corporation publishing a magazine which is manufactured and distributed under instructions from the publisher by a local printing company is doing business within the state to the extent that service of process can be made on it in the state. *Labonte v. American Mercury Magazine, Inc.*, 98 N.H. 163, 96 A.2d 200, 38 A.L.R.2d 742 (1953). (Decided under prior law.)

11. —Situs of injuries

Where injuries were committed in this state by foreign corporation, citizen's right to institute local suit was given heavy weight on jurisdictional scale. *Grappone, Inc. v. Subaru of Am., Inc.*, 403 F. Supp. 123, 1975 U.S. Dist. LEXIS 15322 (D.N.H. 1975). (Decided under prior law.)

12. —Lack of another forum

Where an alien defendant is sued by an American plaintiff and there is no particular inconvenience due to the specific forum state, the fact that the defendant is an alien and that there is no other forum in which to litigate the claim should be taken into consideration for purposes of determining whether a finding of jurisdiction meets the requisite constitutional standards of fair play. *Centronics Data Computer Corp. v. Mannesmann, A. G.*, 432 F. Supp. 659, 1977 U.S. Dist. LEXIS 15477 (D.N.H. 1977). (Decided under prior law.)

13. —Insufficient contacts

Contacts with New Hampshire were insufficient to support general personal jurisdiction over operator of airport in Massachusetts. *Patrick v. Massachusetts Port Auth.*, 141 F. Supp. 2d 180, 2001 U.S. Dist. LEXIS 5527 (D.N.H. 2001).

Where former New Hampshire resident's cause of action did not arise from defendant foreign corporation's New Hampshire activities, which consisted of limited advertising of its pharmaceutical products in professional trade journals circulated in New Hampshire and employment of sales represen-

tatives, whose duties consisted in part of providing information regarding the pharmaceutical products to certain New Hampshire physicians, pharmacies, and hospitals and whose sales were made to individual wholesale distributors rather than directly, and defendant maintained no office and engaged in no manufacturing in New Hampshire, held no property there, and had not appointed an agent to receive service of process in New Hampshire, defendant's activities in New Hampshire were not sufficient to support the exercise of general jurisdiction. *Glater v. Eli Lilly & Co.*, 744 F.2d 213, 1984 U.S. App. LEXIS 20563 (1st Cir. 1984). (Decided under prior law.)

Where former New Hampshire resident's cause of action did not arise from defendant foreign corporation's New Hampshire activities, but was caused in Massachusetts by exposure in utero to a drug which her mother purchased and consumed in Massachusetts, and plaintiff's residence in New Hampshire at a time before suit was commenced did not enhance defendant's contacts with the forum, since the injury occurred long before plaintiff's move to New Hampshire and there were no effects in New Hampshire at the time of suit, defendant's sales of the drug in New Hampshire, which were made by sales representatives to individual wholesale distributors, were not sufficiently related to plaintiff's injury to support specific jurisdiction under the standard articulated in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S.Ct. 1473, 79 L.Ed.2d 790, 1984 U.S. LEXIS 40 (1984). *Glater v. Eli Lilly & Co.*, 744 F.2d 213, 1984 U.S. App. LEXIS 20563 (1st Cir. 1984). (Decided under prior law.)

Where a defendant's only contact with the state is that solicited by plaintiff and the contact is minor, the contact is insufficient basis for jurisdiction. *Centronics Data Computer Corp. v. Mannesmann, A. G.*, 432 F. Supp. 659, 1977 U.S. Dist. LEXIS 15477 (D.N.H. 1977). (Decided under prior law.)

Where defendant's representatives visited plaintiff in New Hampshire three times, allegedly in furtherance of defendant's interest in marketing its products, and the only sale was probably procured by plaintiff in an attempt to establish jurisdiction for tort suit, the visits did not constitute sufficient contact by defendant with New Hampshire on which to base jurisdiction. *Centronics Data Computer Corp. v. Mannesmann, A. G.*, 432 F. Supp. 659, 1977 U.S. Dist. LEXIS 15477 (D.N.H. 1977). (Decided under prior law.)

Mere act of solicitation in this state did not, ipso facto, subject defendant to long-arm jurisdiction. *Mulhern v. Holland America Cruises*, 393 F. Supp. 1298, 1975 U.S. Dist. LEXIS 12593 (D.N.H. 1975). (Decided under prior law.)

Where cause of negligence action arose outside of this state and did not arise out of defendant's activities in this state, all witnesses except plaintiff, her husband and her attending doctor were in New York, travel agency which sold plaintiff ticket for cruise was not defendant's agent, defendant's sole contact with this state was its relationship with travel agencies whereby it distributed promotional brochures regarding cruises on a ship and, to a select few, blank contracts, and a probable indispensable party, i.e., ship's operator, was not subject to this state's judicial process, to subject defendant to in personam jurisdiction of this court in diversity suit to recover damages for injuries while on board ship would violate due process. *Mulhern v. Holland America Cruises*, 393 F. Supp. 1298, 1975 U.S. Dist. LEXIS 12593 (D.N.H. 1975). (Decided under prior law.)

In an action by plaintiff to recover for injuries received while on board cruise ship, in absence of any evidence that New Hampshire travel agency solicited plaintiff for cruise or that it had legal power to bind defendant with principal offices in New York and engaged in selling of vacation cruises, agency relationship did not exist between defendant and travel agency so as to subject defendant to in personam jurisdiction. *Mulhern v. Holland America Cruises*, 393 F. Supp. 1298, 1975 U.S. Dist. LEXIS 12593 (D.N.H. 1975). (Decided under prior law.)

In an action by domestic corporation against foreign corporation for alleged breach of contract, court had no jurisdiction where sole contact between defendant and New Hampshire was single sale to plaintiff. *Acme Eng'g, Inc. v. Ceramic Coating Co.*, 397 F. Supp. 875, 1975 U.S. Dist. LEXIS 11469 (D.N.H. 1975). (Decided under prior law.)

14. Objections to service

It has long been established in this state that an objection to service or notice is waived when a party submits any other question, except sufficiency of the service or notice to the court; thus trial court correctly held that foreign corporation had waived its claim of lack of jurisdiction by including a plea of the statute of limitations. *Gagnon v. Croft Mfg. & Rental Co.*, 108 N.H. 329, 235 A.2d 522, 1967 N.H. LEXIS 182 (1967). (Decided under prior law.)

15. Effect of service

Service on the secretary of state in accordance with this section gives the court jurisdiction of the corporation as well as of the property attached on the writ, though the copy given to the secretary of state does not include a copy of the officer's return of the attachment. *Quimby v. Central N.H. Power Co.*, 78 N.H. 174, 98 A. 303, 1916 N.H. LEXIS 26 (1916). (Decided under prior law.)

16. Tort actions

Because a summons and complaint in a tort action are documents that may be served on a corporation in accordance with law, service of those documents on the registered agent of the corporation falls within the terms of paragraph I of this section. *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 1984 U.S. App. LEXIS 19919 (1st Cir. 1984). (Decided under prior law.)

In light of the deletion of the language in the predecessor of this section, PL 187:1, requiring foreign corporations to designate the attorney general as their agent "upon whom lawful process in any action or proceeding against it upon any liability arising in this state may be served," the inference is inescapable that the legislature did not intend that this section be restricted to torts that are committed in the state. *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 1984 U.S. App. LEXIS 19919 (1st Cir. 1984). (Decided under prior law.)

This section is not applicable in a tort case only where the tort is committed in the state of New Hampshire. *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 1984 U.S. App. LEXIS 19919 (1st Cir. 1984). (Decided under prior law.)

Part B**Withdrawal****293-A:15.20. Withdrawal of Foreign Corporation.**

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application shall set forth:

(1) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) a mailing address to which the secretary of state may mail a copy of any process served to him under subparagraph (b)(3);

(5) a commitment to notify the secretary of state in the future of any change in its mailing address; and

(6) a statement of withdrawal from the New Hampshire department of revenue administration in accordance with RSA 77-A:18, II and RSA 77-E:12, II.

(c) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b).

Source.

1992, 255:1. 1993, 350:28, eff. July 1, 1993.

Amendments

—1993. Subparagraph (b)(6): Added "and RSA 77-E:12, II" following "RSA 77-A:18, II".

Severability

—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

Cross References.

Filing, service, copying and special fees, see RSA 293-A:1.22.

Part C**Revocation of Certificate of Authority****Cross References.**

Revocation of certificate of authority of foreign professional corporation, see RSA 294-A:7.

293-A:15.30. Revocation of Certificate of Authority.

(a) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(1) The corporation has failed to file its annual report within the time required by this chapter or has failed to pay any annual report, franchise or maintenance fees or penalties prescribed by this chapter when they have become due and payable;

(2) The corporation has failed to appoint and maintain a registered agent in this state as required by this chapter;

(3) The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of the change as required by this chapter;

(4) The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation within the time required by this chapter; or

(5) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by the corporation or on its behalf, pursuant to this chapter.

(b) No certificate of authority of a foreign

corporation shall be revoked by the secretary of state unless:

(1) He shall have given the corporation not less than 60 days' notice of the revocation by mail addressed to its principal office listed on the records of the New Hampshire secretary of state; and

(2) The corporation shall fail prior to revocation to file the annual report, or pay the annual report, franchise or maintenance fees or penalties, or file the required statement of change of registered agent or registered office, or file the articles of amendment, or correct the misrepresentation.

Source.

1992, 255:1.1993, 344:13, eff. July 1, 1993.

Amendments

—1993. Rewritten to the extent that a detailed comparison would be impracticable.

293-A:15.31. Issuance of Notice of Revocation.

(a) Upon revoking any certificate of authority, the secretary of state shall:

(1) Issue a notice of revocation; and

(2) Mail said notice to the corporation at its principal office listed on the records of the New Hampshire secretary of state.

(b) Upon the issuance of the notice of revocation, the authority of the corporation to transact business in this state shall cease.

Source.

1992, 255:1. 1993, 344:14, eff. July 1, 1993. 2004, 248:12, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

—1993. Rewritten to the extent that a detailed comparison would be impracticable.

293-A:15.32. Appeal From Revocation.

(a) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the superior court within 30 days after revocation is perfected. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's notice of revocation.

(b) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

Source.

1992, 255:1. 1993, 344:15, eff. July 1, 1993. 2004, 248:13, eff. July 1, 2004.

Amendments

—2004. Subsection (a): Substituted "state's notice" for "state's certificate" in the second sentence.

—1993. Subsection (a): Deleted "service of the certificate of" following "after" in the first sentence.

Records and Reports

Part A

Records

293-A:16.01. Corporate Records.

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect.

(2) Its bylaws or restated bylaws and all amendments to them currently in effect.

(3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

(4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past 3 years.

(5) All written communications to shareholders generally within the past 3 years, including the financial statements furnished for the past 3 years under RSA 293-A:16.20.

(6) A list of the names and business addresses of its current directors and officers.

(7) Its most recent annual report delivered to the secretary of state under RSA 293-A:16.22.

Source.

1992, 255:1, eff. Jan. 1, 1993.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Shareholders' Inspection Rights: Current Law and Proposed Legislation," see 44 N.H.B.J. 20 (Sept. 2003).

293-A:16.02. Inspection of Records by Shareholders.

(a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in RSA 293-A:16.01(e) if he gives the corporation written notice of his demand at least 5 business days before the date on which he wishes to inspect and copy.

(b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of his demand at least 5 business days before the date on which he wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a).

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records described in subsection (b) only if:

(1) His demand is in writing, and is made in good faith and states a proper purpose;

(2) He describes with reasonable particularity his purpose and the records he desires to inspect; and

(3) The records are directly connected with his purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles or incorporation or bylaws.

(e) This section does not affect:

(1) The right of a shareholder to inspect records under RSA 293-A:7.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.

(2) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

Source.

1992, 255:1, eff. Jan. 1, 1993.

NOTES TO DECISIONS

Shareholder access to shareholder list

The test of "proper purpose" under this section, permitting shareholder access to shareholder list "for proper purpose," is

whether shareholder has an independent proper interest in obtaining the list, regardless of amount or type of assistance in obtaining or using list given shareholder by any third party. *Davey v. Unital Corp.*, 133 N.H. 833, 585 A.2d 858, 1991 N.H. LEXIS 5 (1991). (Decided under prior law.)

Fact that shareholder would turn shareholder list over to corporation to use for purpose of encouraging other shareholders to tender shares without retaining control over corporation's actual use of list did not defeat shareholder's "proper purpose" in seeking list under statutory criteria for access absent proof corporation would use list for other purposes. *Davey v. Unital Corp.*, 133 N.H. 833, 585 A.2d 858, 1991 N.H. LEXIS 5 (1991). (Decided under prior law.)

Shareholder who sought access to shareholder list in order to turn list over to corporation making cash tender offer to buy all outstanding shares so that corporation could communicate with shareholders and encourage them to tender their shares had independent "proper purpose" meeting statutory criterion for access where shareholder reasonably believed giving the list to corporation would increase his own chances of financially benefiting from tender offer. *Davey v. Unital Corp.*, 133 N.H. 833, 585 A.2d 858, 1991 N.H. LEXIS 5 (1991). (Decided under prior law.)

Where shareholder sought access to shareholder list in order to indirectly encourage other shareholders to accept tender offer, record did not support defendant's bald assertion that tender offer was "grossly inadequate" such as would require finding that shareholder's purpose for seeking list was inimical to interests of corporation or its shareholders and thus not a "proper purpose." *Davey v. Unital Corp.*, 133 N.H. 833, 585 A.2d 858, 1991 N.H. LEXIS 5 (1991). (Decided under prior law.)

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Shareholders' Inspection Rights: Current Law and Proposed Legislation," see 44 N.H.B.J. 20 (Sept. 2003).

For article, "Shareholders' Inspection Rights: Current Law and Proposed Legislation," see 44 N.H.B.J. 20 (Sept. 2003).

293-A:16.03. Scope of Inspection Right.

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he represents.

(b) The right to copy records under RSA 293-A:16.02 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge shall not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under RSA 293-A:16.02(b)(3) by providing him with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:16.04. Court-Ordered Inspection.

(a) If a corporation does not allow a shareholder who complies with RSA 293-A:16.02(a) to

inspect and copy any records required by that subsection to be available for inspection, the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with RSA 293-A:16.02(b) and (c) may apply to the superior court in the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

Source.

1992, 255:1, eff. Jan. 1, 1993.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Shareholders' Inspection Rights: Current Law and Proposed Legislation," see 44 N.H.B.J. 20 (Sept. 2003).

Part B

Reports

293-A:16.20. Financial Statements for Shareholders.

(a) A corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his report

shall accompany them. If not, the statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principals and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements to each shareholder within 120 days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail him the latest financial statements.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:16.21. Other Reports to Shareholders.

(a) If a corporation indemnifies or advances expenses to a director under RSA 293-A:8.51, 293-A:8.52, 293-A:8.53, or 293-A:8.54 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(b) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation with or before the notice of the next shareholders' meeting.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:16.22. Annual Report for Secretary of State.

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, except corporations making returns to the insurance commissioner, shall deliver to the secretary of state for filing an annual report that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated.

(2) The address of its registered office and the name of its registered agent at that office in this state.

(3) The address of its principal office.

(4) The names and business addresses of its directors and principal officers.

(5) A brief description of the nature of its business.

(6) The signature of an officer, director, or any other person authorized by the board of directors to execute the annual report.

(b) Information in the annual report shall be current as of January 1 of the year the report is due.

(c) The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business; provided, however, that a foreign corporation that has received its certificate of authority at any time between December 1 of the preceding year and April 1, or a domestic corporation which has received its certificate of incorporation during the same period shall not be required to file an annual report during that year. Subsequent annual reports shall be delivered to the secretary of state between January 1 and April 1 of the following calendar years.

(d) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is deemed to be timely filed.

Source.

1992, 255:1. 1993, 344:16, eff. July 1, 1993. 1998, 106:2, eff. Aug. 1, 1998.

Amendments

—1998. Subsection (a): Added subpar. (6).

—1993. Subsection (b): Substituted “January 1 of the year the report is due” for “the date the annual report is executed on behalf of the corporation” following “current as of”.

Cross References.

Annual report of professional corporations, see RSA 294-A:28.

Failure of foreign corporations to file reports, see RSA 293-A:15.30.

Filing, service, copying and special fees, see RSA 293-A:1.22.

Penalty for failure to file annual report, see RSA 293-A:1.36.

Transition Provisions

293-A:17.01. Application to Existing Domestic Corporations.

This chapter applies to all domestic corporations in existence on January 1, 1993, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:17.02. Application to Qualified Foreign Corporations.

A foreign corporation authorized to transact business in this state on January 1, 1993, is subject to this chapter, but is not required to obtain a new certificate of authority to transact business under this chapter.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:17.03. Saving Provisions.

(a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:

(1) The operation of the statute or any action taken under it before its repeal.

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal.

(3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.

(4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statutes as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by the act inserting this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

Source.

1992, 255:1, eff. Jan. 1, 1993.

293-A:17.04. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

Source.

1992, 255:1, eff. Jan. 1, 1993.

CHAPTER 293-B

TREATMENT OF NEW HAMPSHIRE INVESTMENT TRUSTS

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293-B:21.	Short Title.
293-B:22.	Other Trusts not Affected.
293-B:23.	Insurance not Affected.

Cross References.

Business corporations, see RSA 293-A.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Assisting Clients in Choosing the Legal Form of Their Business: A Three-Step Method," see 33 N.H.B.J.321 (1992).

293-B:1. Purpose.

The general court finds that the revitalization of the state's economy and the development of business and investment in New Hampshire will be facilitated by making available a broad range of entities for investment enterprises. The statutory recognition of investment trusts, previously recognized only in common law, provides an alternative to conducting investment activity through entities such as corporations and partnerships and will introduce certainty as to treatment of investment trusts under state law, particularly with respect to the rights and duties of their trustees and beneficiaries. It is the intent of the general court to give the constituent members of investment trusts the widest discretion to fashion structures of such entities to meet their investment needs consistent with the provisions of this chapter.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:2. Definitions.

As used in this chapter, unless the context otherwise requires:

I. "Bank" means bank as such term is defined in RSA 384-B:1, I and shall also include any national banking association authorized to conduct business in this state.

II. "Beneficial owner" means any owner of a beneficial interest in a New Hampshire investment trust, the fact of ownership to be determined and evidenced (whether by means of registration, the issuance of certificates, or otherwise) in conformity to the applicable provisions of the governing instrument of the New Hampshire investment trust.

III. "Governing instrument" means a trust instrument which creates a New Hampshire investment trust and provides for the governance of the affairs of the New Hampshire investment trust and the conduct of its investment activities.

IV. "New Hampshire investment trust" means a "qualified investment company" as defined in RSA 77-A:1, XXI.

V. "Other investment entity" means an out-of-state investment entity which meets the definition of a "qualified investment company" as defined in RSA 77-A:1, XXI, with the exception that such other investment entity need not submit certification to the commissioner.

VI. "Person" means a natural person, partnership, limited partnership, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

VII. "Trustee" means the person or persons appointed as a trustee in accordance with the governing instrument of a New Hampshire investment trust to manage the business, investment activity, and affairs of such New Hampshire investment trust, and may include the beneficial owners of any of them.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:3. Organization; Purposes.

A New Hampshire investment trust may be organized under this chapter for the purpose of carrying on any lawful investment activity within or outside this state, except that nothing contained in this chapter shall preclude a New Hampshire investment trust from engaging in the activities of a trust.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:4. Liability of Beneficial Owners and Trustees.

I. Except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust, the beneficial owners shall be entitled to the same limitation of personal liability extended to stockholders of business corporations.

II. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, a trustee, when acting in such capacity, shall not be personally liable to any person for any act, omission or obligation of the New Hampshire investment trust or any trustee thereof, other than any liabilities to the New Hampshire investment trust or a beneficial owner which arise under the terms of the governing instrument of the New Hampshire investment trust.

Source.

1991, 67:1, eff. May 9, 1991.

Cross References.

Liability of shareholders in business corporations, see RSA 293-B:22.

293-B:5. Legal Proceedings.

I. A New Hampshire investment trust may sue and be sued. In furtherance of the foregoing, a New Hampshire investment trust may be sued for debts and other obligations or liabilities contracted or incurred by the trustees, or by the duly authorized agents of such trustees, in the performance of their respective duties under the governing instrument of the New Hampshire investment trust, and for any damages to persons or property resulting from the negligence of such trustees or agents acting in the performance of such respective duties. The property of a New Hampshire investment trust shall be subject to attachment and execution as if it were a corporation, in accordance with the relevant provisions of New Hampshire law.

II. Notwithstanding paragraph I, if the governing instrument of a New Hampshire investment trust which is a registered investment company under the Investment Company Act of 1940, as amended (15 U.S.C. section 80a-1 et seq.), creates one or more series as provided in RSA 293-B:7, II(d), and if separate and distinct records are maintained for any such series and the assets associated with any such series are held and accounted for separately from the other assets of the New Hampshire investment trust, or any other series thereof, and if the governing instrument so provides, and notice of the limitation on liabilities of a series as referenced in this sentence is set forth in the certificate of trust of the New Hampshire investment trust, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the New Hampshire investment trust generally.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:6. Rights of Beneficial Owners in Trust Property.

I. Except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust, a beneficial owner shall have an undivided beneficial interest in the property of the New Hampshire investment trust or, if applicable, in accordance with the provisions of RSA 293-B:7, specified property of the New Hampshire investment trust, and shall share in the profits and losses of the New Hampshire investment trust in the proportion, expressed as a percentage, of the entire undivided beneficial interest in the New Hampshire

investment trust owned by such beneficial owner or, if applicable, in accordance with the provisions of RSA 293-B:7, in the proportion, expressed as a percentage, of the entire undivided beneficial interest in the series or class of beneficial interests in the New Hampshire investment trust owned by such beneficial owner. The governing instrument of a New Hampshire investment trust may provide that the New Hampshire investment trust or the trustees, acting for and on behalf of the New Hampshire investment trust, shall be deemed to hold beneficial ownership of any income earned on securities of the New Hampshire investment trust issued by any business entities formed, organized, or existing under the laws of any jurisdiction, including the laws of any foreign country.

II. No creditor of the beneficial owner shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the New Hampshire investment trust.

III. A beneficial owner's beneficial interest in the New Hampshire investment trust is freely transferable except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:7. Management of a New Hampshire Investment Trust.

I. The business and affairs of a New Hampshire investment trust shall be managed by or under the direction of its trustees. To the extent provided in the governing instrument of a New Hampshire investment trust, any person, including a beneficial owner, shall be entitled to direct the trustees in the management of a New Hampshire investment trust, including without limitation the investment of securities, real estate, mortgages, and other assets of the New Hampshire investment trust. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, neither the power to give direction to a trustee nor the exercise thereof by any person, including a beneficial owner, shall cause such person to be a trustee.

II. A governing instrument may contain any provision relating to the management of the business or investment affairs of the New Hampshire investment trust, and the rights, duties and obligations of the trustees, beneficial owners and other persons, which is not contrary to any provision or requirement of this chapter and, without limitation:

(a) May provide that a person shall become a beneficial owner and shall become bound by the governing instrument if such person, or a representative authorized by such person orally,

in writing or by other action such as payment for a beneficial interest, complies with the conditions for becoming a beneficial owner set forth in the governing instrument or any other writing and acquires a beneficial interest;

(b) May consist of one or more agreements, instruments or other writings and may include or incorporate bylaws containing provisions relating to the business or investment activities of the New Hampshire investment trust, the conduct of its affairs and its rights or powers or the rights or powers of its trustees, beneficial owners, agents or employees;

(c) May provide for classes, groups or series of trustees or beneficial owners, or classes, groups or series of beneficial interests, having such relative rights, powers and duties as the governing instrument may provide, and may make provision for the future creation in the manner provided in the governing instrument may provide, and may make provision for the future creation in the manner provided in the governing instrument of additional classes, groups or series of trustees, beneficial owners or beneficial interests, having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior or subordinate to existing classes, groups or series of trustees, beneficial owners or beneficial interests;

(d) May establish or provide for the establishment of designated series of trustees, beneficial owners or beneficial interests having separate rights, powers or duties with respect to specified property or obligations of the New Hampshire investment trust or profits and losses associated with specified property or obligations, and to the extent provided in the governing instrument, any such series may have a separate investment objective;

(e) May provide for the taking of any action, including the amendment of the governing instrument; the accomplishment of a merger or consolidation; the appointment of one or more trustees; the sale, lease, exchange, transfer, pledge or other disposition of all or any part of the assets of the New Hampshire investment trust or the assets of any series; or the dissolution of the New Hampshire investment trust, or may provide for the taking of any action to create under the provisions of the governing instrument a class, group or series of beneficial interests that was not previously outstanding, in any such case without the vote or approval of any particular trustee or beneficial owner, or class, group or series of trustees or beneficial owners;

(f) May grant to or withhold from all or certain trustees or beneficial owners, or a specified class, group or series of trustees or beneficial owners, the right to vote, separately or with any or all other classes, groups or series of the trustees or beneficial owners, on any matter, such voting being on a per capita, number,

financial interest, class, group, series or any other basis;

(g) May, if and to the extent that voting rights are granted under the governing instrument, set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on; waiver of any such notice; action by consent without a meeting; the establishment of record dates, quorum requirements, voting in person, by proxy or in any other manner; or any other matter with respect to the exercise of any such right to vote; or

(h) May provide for the present or future creation of more than one New Hampshire investment trust, including the creation of a future New Hampshire investment trust to which all or any part of the assets, liabilities, profits or losses of any existing New Hampshire investment trust will be transferred, and for the conversion of beneficial interests in an existing New Hampshire investment trust, or series thereof, into beneficial interests in the separate New Hampshire investment trust, or series thereof.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:8. Trustee in State.

I. Every New Hampshire investment trust shall at all times have at least one trustee which may either be a natural person or a bank, and in the case of a natural person shall be a person who is a resident of this state. As long as this requirement is satisfied, any additional trustee need not be a bank or natural person who is a resident of this state.

II. Notwithstanding the provisions of paragraph I, if a New Hampshire investment trust is or becomes a registered investment company under the Investment Company Act of 1940, as amended (15 U.S.C. section 80a-1 et seq.), such New Hampshire investment trust shall not be required to have a trustee who is a resident of this state or a bank if and for so long as such New Hampshire investment trust shall be in compliance with paragraph III.

III. Each New Hampshire investment trust shall have and maintain in this state:

(a) A registered office, which may but need not be a place of business in this state; and

(b) A registered agent for service of process on the New Hampshire investment trust, which agent may be either an individual resident of this state or a business entity authorized to do business in this state.

IV. A New Hampshire investment trust may change the location of its registered office in this state to any other place in this state, or may change the registered agent to any other individual resident of this state or business entity having its principal place of business in this

state, by delivering for filing an amendment to its certificate of trust to the secretary of state in accordance with the applicable provisions of this chapter.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:9. Existence of New Hampshire Investment Trust.

I. A New Hampshire investment trust shall exist as a separate legal entity.

II. Except to the extent otherwise provided in the governing instrument of the New Hampshire investment trust, the New Hampshire investment trust shall have perpetual existence.

III. Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust, the death, incapacity, dissolution, termination or bankruptcy of a beneficial owner shall not result in the termination or dissolution of a New Hampshire investment trust.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:10. Applicability of Trust Law.

Except to the extent otherwise provided in the governing instrument of a New Hampshire investment trust or in this chapter, the laws of this state pertaining to trusts are hereby made applicable to New Hampshire investment trusts.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:11. Certificate of Trust; Amendment; Cancellation.

I. One original and one exact copy of a certificate of trust for a New Hampshire investment trust shall be executed and shall be delivered for filing to the secretary of state. The certificate of trust shall set forth:

(a) The name of the New Hampshire investment trust;

(b) The name and the business address of each of the trustees;

(c) The name and the business address of the registered agent for service of process;

(d) The future effective date or time, which shall be a date or time certain, of effectiveness of the certificate if it is not to be effective upon the filing of the certificate; and

(e) Any other information the trustees determine to include.

II. A certificate of trust may be amended by delivering for filing one original and one exact copy of a certificate of amendment to the secretary of state. The certificate of amendment shall set forth:

(a) The name of the New Hampshire investment trust;

(b) The amendment to the certificate; and

(c) The future effective date or time, which shall be a date or time certain, of effectiveness of the certificate if it is not to be effective upon the filing of the certificate.

III. A certificate of trust may be amended at any time for any purpose as the trustees may determine. A trustee who becomes aware that any statement in a certificate of trust was false when made or that any matter described has changed, making the certificate false in any material respect, shall promptly file a certificate of amendment.

IV. A certificate of trust shall be cancelled upon the completion of winding up of the New Hampshire investment trust and its termination. One original and one exact copy of a certificate of cancellation and a statement from the department of revenue administration that all taxes due from or accrued by the New Hampshire investment trust through the effective date of cancellation have been either assessed and paid or adequately provided for in a manner acceptable to the department of revenue administration shall be delivered for filing to the secretary of state and shall set forth:

(a) The name of the New Hampshire investment trust;

(b) The date of filing of its certificate of trust;

(c) The future effective date or time, which shall be a date or time certain, of cancellation if it is not to be effective upon the filing of the certificate; and

(d) Any other information the trustees determine to include.

Source.

1991, 67:1, eff. May 9, 1991.

Cross References.

Fees, see RSA 293-B:14.

Filing of certificates, see RSA 293-B:13.

293-B:12. Execution.

I. Each certificate required by this chapter to be delivered for filing to the secretary of state shall be executed in one original and one exact copy in the following manner:

(a) A certificate of trust shall be signed by all of the trustees;

(b) A certificate of amendment shall be signed by at least one of the trustees;

(c) A certificate of cancellation shall be signed by all of the trustees or as otherwise provided in the governing instrument of the New Hampshire investment trust; and

(d) If a New Hampshire investment trust is filing a certificate of merger or consolidation, the certificate of merger or consolidation shall be signed by all of the trustees or as otherwise provided in the governing instrument of the

New Hampshire investment trust, or, if the certificate of merger or consolidation is being filed by an other investment entity, the certificate of merger or consolidation shall be signed by a person authorized to execute such instrument on behalf of such other investment entity.

II. The execution of a certificate by a trustee constitutes an oath or affirmation, under the penalties of perjury that, to the best of the trustee's knowledge and belief, the facts stated in the certificate are true.

III. Documents filed electronically need not be accompanied by an exact or conformed copy, but must be accompanied by the correct filing fee required by this chapter.

Source.

1991, 67:1, eff. May 9, 1991. 2004, 248:14, eff. July 1, 2004.

Amendments

—2004. Paragraph III: Added.

293-B:13. Filing.

I. One original and one exact copy of the certificate of trust and any certificates of amendment or cancellation or any certificate of merger or consolidation shall be delivered to the secretary of state. Documents filed electronically need not be accompanied by an exact or conformed copy. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) Certify that the certificate of trust, the certificate of amendment, the certificate of cancellation, or the certificate of merger or consolidation has been filed in the secretary of state's office by endorsing upon the original certificate the word "Filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) File and index the endorsed certificate; and

(c) Return the exact copy or acknowledged copy, similarly endorsed, to the person who filed it or his or her representative.

II. Upon the filing of a certificate of trust with the secretary of state, or upon the future effective date or time of a certificate of trust as provided for therein, the certificate of trust shall be effective. Upon the filing of a certificate of amendment in the office of the secretary of state, or upon the future effective date or time of a certificate of amendment as provided for therein, the certificate of trust shall be amended as set forth therein. Upon the filing of a certificate of cancellation or a certificate of merger or consolidation which acts as a certificate of cancellation with the secretary of state, or upon the future effective date or time of a certificate of cancellation or a certificate of merger or consolidation which acts as a certificate of cancellation, as provided for therein, the certificate of trust shall be cancelled.

III. A fee as set forth in RSA 293-B:14, I shall be paid at the time of the filing of a certificate of trust, a certificate of amendment, a certificate of cancellation or a certificate of merger or consolidation.

Source.

1991, 67:1, eff. May 9, 1991. 2004, 248:15, eff. July 1, 2004. 2006, 316:4, eff. July 1, 2006.

Amendments

—2006. Paragraph I(a): Deleted "and hour" following "the date" in the first sentence and deleted "and time" following "the date" in the second sentence.

—2004. Paragraph I: Added the second sentence and substituted "the secretary of state" for "he" in the third sentence of the introductory paragraph; substituted "the secretary of state's" for "his" in subpar. (a); and inserted "or acknowledged copy" preceding "similarly endorsed" and "or her" following "his" in subpar. (c).

293-B:14. Fees.

I. No documents required to be filed under this chapter shall be effective until the applicable fee required by this paragraph is paid. The secretary of state shall charge and collect the following fees:

(a) A fee of \$50 for filing a certificate of trust.

(b) A fee of \$35 for:

(1) Filing a certificate of amendment;

(2) Filing a certificate of cancellation; or

(3) Filing a certificate of merger or consolidation.

(c) A fee of \$15 for:

(1) Filing an application for reservation of name;

(2) Filing a notice of transfer of reservation; or

(3) Filing a notice of cancellation of reservation.

II. In addition to the fee provided in subparagraph I(a), the secretary of state shall charge and collect a registration fee of \$50 from each New Hampshire investment trust at the time of filing a certificate of trust.

III. For the privilege of maintaining its certificate of trust in good standing and continuing to exercise its authority to transact the business of a New Hampshire investment trust in this state, the secretary of state shall charge and collect a fee of \$200 from each New Hampshire investment trust established under RSA 293-B, payable on or before April 1 of each year. Each New Hampshire investment trust that fails or refuses to pay the fees required for any year on or before April 1 shall be subject to an additional fee of \$50.

IV. The certificate of trust of a New Hampshire investment trust may be revoked pursuant to RSA 293-A:14.21 by the secretary of state if the corporation fails to comply with any provision of this chapter applicable to it.

Source.

1991, 67:1, eff. May 9, 1991. 2004, 248:16, eff. July 1, 2004. 2006, 81:2, eff. May 5, 2006.

Amendments

—2006. Paragraph III: Substituted “\$50” for “\$25 per month” in the second sentence.

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

Reimbursement to Administratively Dissolved Entities.

2006, 81:5 provides: “The secretary of state shall reimburse any business entity that received a notice of administrative dissolution dated September 1, 2005 for any fee paid for a reinstatement application and any late fees paid in excess of \$50.”

Reimbursement of Late Fees.

2006, 81:6 provides: “The secretary of state shall reimburse any business entity, not included in section 5 of this act, late fees in excess of \$50 on annual returns paid by the business entity from May 1, 2005 through June 30, 2006.”

293-B:15. Collection of Fees; Administration.

I. The secretary of state shall collect all fees required under RSA 293-B and shall pay them to the treasurer to be deposited in the general fund as unrestricted revenue, except as provided in paragraph II.

II. The state treasurer shall pay the expense of administering RSA 293-B out of any money in the treasury not otherwise appropriated until the fees collected pursuant to RSA 293-B:14, I, have been received. Thereafter, the expenses of administering this chapter shall be paid out of the fees collected under RSA 293-B:14, I, and the treasurer shall reimburse the treasury for the previous expenses paid. The governor is authorized to draw his warrant for the sums authorized by this section out of any money in the treasury not otherwise appropriated.

Source.

1991, 67:1, eff. May 9, 1991; 355:65, eff. July 1, 1991.

Amendments

—1991. Paragraph II: In the first sentence, deleted “by him” following “received”, and in the second sentence, deleted “he shall pay for” following “thereafter”, inserted “shall be paid” following “chapter”, “the treasurer” preceding “shall reimburse” and “the” preceding “previous”, and deleted “by him” following “paid”.

293-B:16. Use of Names Regulated.

I. (a) A New Hampshire investment trust name shall not contain language stating or implying that the New Hampshire investment trust is organized for a purpose other than that permitted by RSA 293-B:3 and its certificate of trust.

(b) Except as authorized by subparagraphs (c) and (d), a New Hampshire investment trust name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(1) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A,

RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(3) The fictitious name of another foreign corporation authorized to transact business in this state.

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(5) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

(c) A New Hampshire investment trust may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in subparagraph (b), as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(1) The holder or holders of the name as described in subparagraph (b) gives written consent to use the name that is not distinguishable from or likely to be confused with or mistaken for the name of the applying corporation; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(2) The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying corporation; or

(3) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A New Hampshire investment trust may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user New Hampshire investment trust:

(1) Has merged with the other entity;

(2) Has been formed by reorganization of the other entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other entity.

(e) This chapter does not control the use of fictitious names.

(f) Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a New Hampshire in-

vestment trust under the same name as the trade name.

II. The exclusive right to the use of a name may be reserved by:

(a) Any person intending to form a New Hampshire investment trust and to adopt that name; and

(b) Any New Hampshire investment trust registered in this state which proposes to change its name.

III. The reservation of a specified name shall be made by filing with the secretary of state an application, executed by the applicant, which may either be a signed or conformed copy, specifying the name to be reserved and the name and address of the applicant. If the secretary of state finds that the name is available for use by a New Hampshire investment trust, the name shall be reserved for the exclusive use of the applicant for a period of 120 days. The same applicant may not reserve the same name until a period of 60 days has passed since the expiration of that applicant's prior reservation. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, which may be either a signed or conformed copy, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with the secretary of state a notice of cancellation, executed by the applicant or transferee, which may be either a signed or conformed copy, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

IV. A fee as set forth in RSA 293-B:14, I(b) shall be paid at the time of the initial reservation of any name, and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

Source.

1991, 67:1, eff. May 9, 1991; 355:66, eff. July 1, 1991. 1999, 293:3, eff. July 16, 1999. 2004, 248:17, eff. July 1, 2004.

Amendments

—2004. Paragraph I: Rewritten to the extent that a detailed comparison would be impracticable.

—1999. Paragraph I: Rewritten to the extent that a detailed comparison would be impracticable.

—1991. Paragraph III: Deleted "he shall reserve" following "trust" and inserted "shall be reserved" preceding "for the exclusive" in the second sentence.

293-B:17. Merger and Consolidation.

I. Pursuant to an agreement of merger or consolidation, a New Hampshire investment trust may merge or consolidate with or into one or more New Hampshire investment trusts or other investment entities formed or organized or existing under the laws of any other state or

the United States or any foreign country or other foreign jurisdiction, with such New Hampshire investment trust or other investment entity as the agreement shall provide being the surviving or resulting New Hampshire investment trust or other investment entity. Unless otherwise provided in the governing instrument of a New Hampshire investment trust, a merger or consolidation shall be approved by each New Hampshire investment trust which is to merge or consolidate by all of the trustees and the beneficial owners of such New Hampshire investment trust. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a New Hampshire investment trust or other investment entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting New Hampshire investment trust or other investment entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interest in, a New Hampshire investment trust or other investment entity which is not the surviving or resulting New Hampshire investment trust or other investment entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision of such termination or amendment contained in the agreement of merger or consolidation.

II. If a New Hampshire investment trust is merging or consolidating under this section, the New Hampshire investment trust or other investment entity surviving or resulting in or from the merger or consolidation shall deliver one original and one exact copy of a certificate of merger or consolidation to the secretary of state. The certificate of merger or consolidation shall state:

(a) The name and jurisdiction of formation or organization of each of the New Hampshire investment trusts or other investment entities which is to merge or consolidate;

(b) That an agreement of merger or consolidation has been approved and executed by each of the New Hampshire investment trusts or other investment entities which is to merge or consolidate;

(c) The name of the surviving or resulting New Hampshire investment trust or other investment entity;

(d) The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(e) That the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or resulting New Hampshire investment trust or other investment entity, and shall state the address thereof;

(f) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting New Hampshire investment trust or other investment entity, on request and without cost, to any beneficial owner of any New Hampshire investment trust or any person holding an interest in any other investment entity which is to merge or consolidate; and

(g) If the surviving or resulting entity is not a New Hampshire investment trust, a statement that such surviving or resulting other investment entity agrees that it may be served with process in the state of New Hampshire in any action, suit or proceeding for the enforcement of any obligation of any New Hampshire investment trust which is to merge or consolidate, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state. In the event of service under this subparagraph upon the secretary of state, the plaintiff in any such action, suit or proceeding shall furnish the secretary of state with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the secretary of state, and the secretary of state shall notify such surviving or resulting other investment entity thereof at all such addresses furnished by the plaintiff by letter, certified mail, return receipt required. Such letter shall enclose a copy of the process and any other papers served upon the secretary of state. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the secretary of state that service is being made pursuant to this subparagraph, and to pay the secretary of state the sum of \$25 for use of the state of New Hampshire, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The secretary of state shall maintain an alphabetical record of any such process setting forth the names of the plaintiff and defendant, the title, docket number and nature of the proceedings in which process has been served upon him, the return date thereof, and the day and hour when the service was made. The secretary of state shall not be required to retain such information for a period longer than 5 years from his receipt of the service of process.

III. Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation which was effective prior to the effective date of this chapter shall not affect the validity or effectiveness of any such merger or consolidation.

IV. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation

shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the secretary of state of a certificate of merger or consolidation.

V. A certificate of merger or consolidation shall act as a certificate of cancellation for a New Hampshire investment trust which is not the surviving or resulting entity in the merger or consolidation.

VI. Notwithstanding anything to the contrary contained in the governing instrument of a New Hampshire investment trust, a governing instrument of a New Hampshire investment trust containing a specific reference to this paragraph may provide that an agreement of merger or consolidation approved in accordance with paragraph I may (1) effect any amendment to the governing instrument of the New Hampshire investment trust or (2) effect the adoption of a new governing instrument of the New Hampshire investment trust if it is the surviving or resulting New Hampshire investment trust in the merger or consolidation. Any amendment to the governing instrument of a New Hampshire investment trust or adoption of a new governing instrument of the New Hampshire investment trust made pursuant to this paragraph shall be effective at the effective time or date of the merger or consolidation. The provisions of this paragraph shall not be construed to limit the accomplishment of a merger or consolidation or of any of the matters referred to herein by any other means provided for in the governing instrument of a New Hampshire investment trust or other agreement or as otherwise permitted by law, including that the governing instrument of any constituent New Hampshire investment trust to the merger or consolidation, including a New Hampshire investment trust formed for the purpose of consummating a merger or consolidation, shall be the governing instrument of the surviving or resulting New Hampshire investment trust.

VII. When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the state of New Hampshire, all of the rights, privileges and powers of each of the New Hampshire investment trusts and other investment entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said New Hampshire investment trusts and other investment entities, as well as all other things and causes of action belonging to each of such New Hampshire investment trusts and other investment entities, shall have vested in the surviving or resulting New Hampshire investment trust or other investment entity, and shall thereafter be the property of the surviving or resulting New Hampshire investment trust or other investment entity as they were of each of the New Hampshire investment trusts and other investment entities that have merged or consolidated,

and the title to any real property vested by deed or otherwise, under the laws of the state of New Hampshire, in any of such New Hampshire investment trusts and other investment entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said New Hampshire investment trusts and other investment entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said New Hampshire investment trusts and other investment entities that have merged or consolidated shall thenceforth attach to the surviving or resulting New Hampshire investment trust or other investment entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

Source.

1991, 67:1, eff. May 9, 1991.

Cross References.

Fees, see RSA 293-B:14.

293-B:18. Derivative Actions.

I. A beneficial owner may bring an action in the right of a New Hampshire investment trust in the same state court of New Hampshire as derivative actions with respect to corporations under RSA 293-A:49 to recover a judgment in its favor if trustees with authority to do so have refused to bring the action or if an effort to cause those trustees to bring the action is not likely to succeed.

II. In a derivative action, the plaintiff shall be a beneficial owner at the time of bringing the action:

(a) At the time of the transaction of which he complains; or

(b) His status as a beneficial owner had devolved upon him by operation of law or pursuant to the terms of the governing instrument of the New Hampshire investment trust from a person who was a beneficial owner at the time of the transaction.

III. In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by the trustees, or the reasons for not making the effort.

IV. If a derivative action is successful, in whole or in part, or if anything is received by a New Hampshire investment trust as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees. If anything is so received by the plaintiff, the court shall make such award of plaintiff's expenses payable out of those proceeds and direct plaintiff to remit to the New Hampshire investment trust the remainder thereof, and if those proceeds are insufficient to reimburse plaintiff's reasonable expenses, the

court may direct that any such award of plaintiff's expenses or a portion thereof be paid by the New Hampshire investment trust.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:19. Indemnification.

I. Subject to such standards and restrictions, if any, as are set forth in the governing instrument of a New Hampshire investment trust, a New Hampshire investment trust shall have the power to indemnify and hold harmless any trustee or beneficial owner or other person from and against any and all claims and demands whatsoever.

II. The absence of a provision for indemnity in the governing instrument of a New Hampshire investment trust shall not be construed to deprive any trustee or beneficial owner or other person of any right to indemnity which is otherwise available to such person under the laws of this state.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:20. Applicability.

To the extent that any provision of any other chapter of the New Hampshire Revised Statutes Annotated conflicts with any provision in this chapter, the provisions in this chapter shall be controlling, with respect to a New Hampshire investment trust or other investment entity.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:21. Short Title.

This chapter may be cited as the "New Hampshire Investment Trust Act."

Source.

1991, 67:1, eff. May 9, 1991.

293-B:22. Other Trusts not Affected.

This chapter shall not be interpreted to limit or to enlarge the power of trusts that are organized under any other law and shall apply only to a New Hampshire investment trust as defined in RSA 293-B:2, IV and an other investment entity as defined in RSA 293-B:2, V.

Source.

1991, 67:1, eff. May 9, 1991.

293-B:23. Insurance not Affected.

This chapter shall not be interpreted to limit or to enlarge the power of any state-chartered or federally-chartered financial institution to engage in the business of insurance or in any activity requiring licensing under RSA 401 or RSA 405.

Source.

1991, 67:1, eff. May 9, 1991.

CHAPTER 294-A**PROFESSIONAL CORPORATIONS****Section**

294-A:1.	Definition; Professional Service; Professional Corporations.
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294-A:21.	Amendments to Articles of Incorporation.
294-A:22.	Merger and Consolidation.
294-A:23.	Termination of Professional Activities.
294-A:24.	Involuntary Dissolution.
294-A:25.	Admission of Foreign Professional Corporations.
294-A:26.	Application for Certificate of Authority.
294-A:27.	Revocation of Certificate of Authority.
294-A:28.	Annual Report.
294-A:29.	Effect of Incorporation Laws.
294-A:30.	Application to Existing Corporations.
294-A:31.	Effect of Repeal of Prior Acts.

Recodification of chapter.

1981, 236:1, eff. Feb. 1, 1982, provided for the recodification of RSA 294-A. The original chapter, consisting of RSA 294-A:1-294-A:8, was derived from 1969, 111:1 and 1974, 10:1.

Cross References.

Nonprofit legal services corporations, see RSA 292:1-a.

NOTES TO DECISIONS**Cited:**

Cited in *In re New Hampshire Bar Ass'n*, 110 N.H. 356, 266 A.2d 853, 1970 N.H. LEXIS 171 (1970).

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article, "Assisting Clients in Choosing the Legal Form of Their Business: A Three-Step Method," see 33 N.H.B.J.321 (1992).

ALR.

Issues pertaining to ownership of professional corporation as affected by resignation from corporate practice by active shareholder.32 A.L.R.4th 921.

Liability of professional corporation of lawyers, or individual members thereof, for malpractice or other tort of another member.39 A.L.R.4th 556.

Propriety, under state statutes or bar association or court

rules, of formation of multi-state law partnership or professional service corporation.6 A.L.R.4th 1251.

294-A:1. Definition; Professional Service; Professional Corporations.

In this chapter:

I. "Disqualified person" means a natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity which for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

II. "Domestic professional corporation" means a professional corporation as defined in RSA 294-A:1, V.

III. "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the laws of this state.

IV. "Licensing authority" means the officer, board, agency, court or other authority in this state which has the power to license, register, certificate, or otherwise grant legal authorization to render a professional service.

V. "Professional corporation" means a corporation for profit organized under this chapter.

VI. "Professional service" means any service which may lawfully be rendered only by certified public accountants, public accountants, architects, attorneys, podiatrists, chiropractors, dentists, pharmacists, professional engineers, land surveyors, registered professional nurses, optometrists, physicians and surgeons, physician assistants, psychologists, veterinarians, and all other professionals licensed, registered, certified, or otherwise authorized and permitted to practice independently under the provisions of RSA 309-A, 310-A, 311, 315, 316-A, 317-A, 318, 326-B, 327, 328-D, 329, 330-A, or 332-B and which may not lawfully be rendered by a corporation organized under the law of this state applicable to business corporations.

VII. "Qualified person" means a natural person, general partnership, or professional corporation which is eligible under this chapter to own shares issued by a professional corporation.

Source.

1981, 236:1.1985, 339:10.1993, 300:2, eff. Aug. 22, 1993.1996, 24:1, eff. June 14, 1996.

References in text.

The reference to RSA 309-A in par. VI is obsolete.RSA 309-A was repealed by 1994, 316:15, eff. July 1, 1994. See RSA 309-B.

Amendments

—1996. Paragraph VI: Deleted "and" preceding "veterinarians" and inserted "and all other professionals" thereafter and inserted "and permitted to practice independently" following "or otherwise authorized".

—1993. Paragraph VI: Inserted "physician assistants" following "surgeons" and "328-D" following "327".

—1985. Paragraph VI: Rewritten to the extent that a detailed comparison would be impracticable.

Applicability of 1996 amendment.

1996, 24:3, eff. June 14, 1996, provided that the amend-

ment to this section by section 1 of the act shall apply to all domestic and foreign professional corporations and professional limited liability companies organized and in existence in this state as of the June 14, 1996.

Applicability of 1993 amendment.

1993, 300:3, eff. Aug. 22, 1993, provided: "Section 2 of this act [which amended par. VI of this section] shall apply in such a manner as to recognize and legalize all activity of physician assistants to the extent of their otherwise legitimate operations as or as part of professional associations or professional corporations as of the date such physician assistants were initially licensed under law or rule."

Revision note.

Substituted "RSA 309-A, 310-A, 311, 315, 316-A" for "RSA 309-A, 310-A, 311, 315, 316" following "provisions of" in par. VI in view of the repeal of RSA 316, and the enactment of RSA 316-A by 1988, 87.

At the end of par. VI, substituted "330-A" for "303-A" to correct an error in the reference.

294-A:2. Permissible Purposes of Professional Corporations.

I. Except as provided in RSA 294-A:2, II, professional corporations may be organized under this chapter only for the purpose of rendering professional services, including necessary related services, within a single profession.

II. A professional corporation may be incorporated for the purpose of rendering professional services within 2 or more professions and for any purpose or purposes of this state for which corporations may be organized under the law of this state applicable to business corporations to the extent that the combination of professional purposes or of professional and business purposes is permitted by the licensing laws of this state applicable to such professions and rules adopted under those laws.

Source.

1981, 236:1, eff. Feb. 1, 1982.

Cross References.

Purposes of business corporations, see RSA 293-A:3.

294-A:3. Prohibited Activities.

A professional corporation shall not engage in any profession or business other than the profession or professions and businesses permitted by its articles of incorporation, except that a professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:4. General Powers.

A professional corporation shall have the powers enumerated in the law of this state applicable to business corporations, except that a professional corporation may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust or other enterprise engaged only in rendering professional services or carrying on business per-

mitted by the articles of incorporation of the corporation.

Source.

1981, 236:1, eff. Feb. 1, 1982.

Cross References.

General powers of business corporations, see RSA 293-A:3.02.

294-A:5. Rendering Professional Services.

A professional corporation, domestic or foreign, may render professional services in this state only through those persons permitted to render such services by the appropriate licensing authority. Nothing in this chapter shall be construed:

I. To require that any person who is employed by a professional corporation must be licensed to perform services for which no license is otherwise required;

II. To prohibit the rendering of professional services by a licensed natural person acting in his individual capacity. Any such person may also be a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign; or

III. To prohibit the rendering of professional services by a person acting under the supervision or control of a licensed natural person.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:6. Right of Corporation to Acquire its own Shares.

A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or surplus for the purchase. However, no purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when the purchase or payment would make it insolvent.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:7. Corporate Name.

The name of a domestic professional corporation or of a foreign professional corporation authorized to transact business in this state:

I. Shall end with one of the following words or abbreviations: "professional corporation," "professional association," "Prof.Corp.," "Prof.Ass'n," "P.C.," or "P.A." or similar abbreviations of these words;

II. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;

III. (a) Except as authorized by subparagraph (b), a professional corporation name, based upon the records of the secretary of state,

shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(1) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(3) The fictitious name of another foreign corporation authorized to transact business in this state.

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(5) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

(b) Subparagraph (a) shall not apply if:

(1) The similarity results from the use in the professional corporate name of personal names of its stockholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(2) The applicant files with the secretary of state an application for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in subparagraph (a), as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(A) The holder or holders of the name as described in subparagraph (a) gives written consent to use the name that is not distinguishable from or likely to be confused with or mistaken for the name of the applying corporation; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(B) The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying corporation; or

(C) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(c) A professional corporation may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business

in this state and the proposed user professional corporation:

(1) Has merged with the other entity;

(2) Has been formed by reorganization of the other entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other entity.

(d) This chapter does not control the use of fictitious names.

(e) Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a professional corporation under the same name as the trade name.

IV. Shall otherwise conform to any rule adopted by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.

Source.

1981, 236:1, eff. Feb. 1, 1982. 2004, 248:18, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Registration of corporate name, see RSA 293-A:4.03.

Reservation of exclusive right to corporate name, see RSA 293-A:4.02.

294-A:8. Issuance and Transfer of Shares; Share Certificates.

I. A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) Natural persons who are authorized by law in this state, any other state or territory of the United States or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) General partnerships in which all the partners are qualified persons with respect to the professional corporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation; and

(c) Professional corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.

II. Where deemed necessary by the licensing authority for any profession in order to prevent violations of the ethical standards of the profession, the licensing authority may by rule further restrict, condition, or abridge the authority of professional corporations to issue shares. No such rule shall, of itself, have the effect of causing a shareholder of a professional corporation at the time the rule becomes effective to become a disqualified person or of suspending the terms of any stock purchase, stock option or other agreement then in force providing for the purchase of shares by any person. All shares issued in violation of this section or in violation

of any rule adopted under this section shall be void.

III. A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or option to purchase shares of the corporation only to natural persons, general partnerships and professional corporations qualified under this chapter to hold shares issued directly to them by the professional corporation. Any transfer of shares in violation of this section shall be void; however, nothing contained in this section shall prohibit the transfer of shares of a professional corporation by operation of law or court decree.

IV. Every certificate representing shares of a professional corporation shall state conspicuously upon its face that the shares represented by the certificate are subject to:

(a) Restrictions on transfer imposed by this chapter; and

(b) Any further restrictions on transfer as may be imposed by the licensing authority pursuant to this chapter.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:9. Death or Disqualification of a Shareholder.

I. Upon the death of a shareholder of a professional corporation, or if a shareholder of a professional corporation becomes a disqualified person, or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares of the deceased shareholder or of the disqualified person may be transferred to a qualified person. If not so transferred, the shares shall be purchased or redeemed by the corporation to the extent of funds which may be legally made available for the purchase.

II. If the price for such shares is not fixed by the articles of incorporation, bylaws of the corporation or by private agreement, the corporation, within 6 months after the death or 30 days after the disqualification or transfer, shall make a written offer to pay for the shares at a specified price deemed by the corporation to be the fair value of the shares as of the date of the death, disqualification or transfer. The offer shall be given to the executor or administrator of the estate of a deceased shareholder or to the disqualified shareholder or transferee and shall be accompanied by:

(a) A balance sheet of the corporation, as of the latest available date and not more than 12 months prior to the making of the offer; and

(b) A profit and loss statement of the corporation for the 12 month period ending on the date of the balance sheet.

III. This section shall not be deemed to require the purchase of shares of a disqualified person when the period of the disqualification is

for less than 5 months from the date of disqualification or transfer.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:10. Fair Value of the Shares.

If within 30 days after the date of the written offer from the corporation the fair value of the shares is agreed upon between the disqualified person and the corporation, payment of the shares shall be made. The payment shall be made within 60 days, or within such other period as the parties may fix by agreement, after the date of the offer, upon surrender of the certificate or certificates representing the shares. Upon payment of the agreed value the disqualified persons shall cease to have any interest in the shares.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:11. Determination of Value by a Court.

I. If the disqualified person and the corporation do not agree on a fair value of the shares within 30 days after the written offer from the corporation, the corporation, within 30 days after receipt of written demand from the disqualified person given within 60 days after the date of the corporation's written offer shall, or at its election at any time within the period of 60 days may, file a petition in the superior court for the county in which the registered office of the corporation is located requesting that the fair value of the shares be found and determined.

II. If the corporation fails to institute the proceeding as provided in this section the disqualified person may do so within 60 days after delivery of the written demand to the corporation.

III. The disqualified person, wherever residing, shall be made a party to the proceeding as an action against his shares quasi in rem. A copy of the petition shall be personally served on the disqualified person, if a resident of this state, and shall be served by registered or certified mail on the disqualified person, if a nonresident. Service on nonresidents may also be made by publication, if ordered by the court. The jurisdiction of the court shall be exclusive.

IV. The disqualified person shall be entitled to judgment against the corporation for the amount of the fair value of his shares as of the date of death, disqualification, or transfer upon surrender to the corporation of the certificate or certificates representing the shares. The court may, in its discretion, order that the judgment be paid in installments as the court may determine.

V. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the power

and authority as specified in the order of their appointment or in an amendment of the order.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:12. Interest; Costs; Expenses.

I. The judgment shall include an allowance for interest at a rate which the court finds to be fair and equitable in all the circumstances, from the date of death, disqualification, or transfer.

II. The costs and expenses of any proceeding under RSA 294-A:11 shall be determined by the court and shall be assessed against the corporation, provided that all or any part of the costs and expenses may be apportioned and assessed, as the court may deem equitable, against the disqualified person if the court finds that the failure of the disqualified person to accept an offer from the corporation was frivolous or unreasonable. The expenses shall include reasonable compensation for and reasonable expenses of the appraisers and may include the fees and expenses of counsel for and experts employed by any party. However, if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay, or if no offer was made, the court in its discretion may award to the disqualified persons a sum which the court determines to be reasonable compensation to any expert or experts employed by the disqualified person in the proceeding.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:13. Cancellation of Shares.

If the purchase, redemption, or transfer of the shares of a deceased or disqualified shareholder or of a transferee who is a disqualified person is not completed within 10 months after the death of the deceased shareholder or 5 months after the disqualification or transfer, the corporation shall immediately cancel the shares on its books and the disqualified person shall have no further interest as a shareholder in the corporation other than his right to payment for such shares under RSA 294-A:9-12.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:14. Shares Acquired by the Corporation.

Shares acquired by a corporation pursuant to payment of the agreed value under RSA 294-A:10 or to payment of the judgment entered under RSA 294-A:11 may be held and disposed of by the corporation as in the case of other treasury shares.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:15. Specific Enforcement in Superior Court.

Any provision regarding purchase, redemption or transfer of shares of a professional corporation contained in the articles of incorporation, bylaws, or any private agreement shall be specifically enforceable in the superior court.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:16. Pension Benefits; Deferred Compensation.

Nothing contained in this chapter shall prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:17. Liability of Shareholders and Employees.

I. Any reference to a professional corporation in this section shall include both domestic and foreign professional corporations.

II. Every individual who renders professional services as an employee of a professional corporation shall be liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he rendered the services as a sole practitioner. An employee of a professional corporation shall not be liable for the conduct of other employees unless he is at fault in appointing, supervising, or cooperating with them.

III. Every professional corporation whose employees perform professional services within the scope of their employment or of their apparent authority to act for the corporation shall be liable to the same extent as its employees.

IV. Except as otherwise provided by law, the personal liability of a shareholder of a professional corporation shall be no greater in any respect than that of a shareholder of a corporation organized under the law of this state applicable to business corporations.

Source.

1981, 236:1, eff. Feb. 1, 1982.

Cross References.

Liability of shareholders of business corporations, see RSA 293-A:6.22.

NOTES TO DECISIONS

Construction

An employee of a professional corporation is not liable for other employees' conduct unless he is at fault in appointing, supervising, or cooperating with them. *Bianco Professional Ass'n v. Home Ins. Co.*, 144 N.H. 288, 740 A.2d 1051, 1999 N.H. LEXIS 110 (1999).

Cited:

Cited in *Bianco Professional Ass'n v. Home Ins. Co.*, 144 N.H. 288, 740 A.2d 1051, 1999 N.H. LEXIS 110 (1999).

RESEARCH REFERENCES**ALR.**

Professional corporation stockholders' nonmalpractice liability.50 A.L.R.4th 1276.

What constitutes professional services within meaning of statute preserving individual liability of professional employees of professional corporation, association, or partnership.31 A.L.R.4th 898.

294-A:18. Professional Relationships; Privileged Communications.

I. The relationship between an individual performing professional services as employee of a professional corporation, domestic or foreign, and a client or patient shall be the same as if the individual performed the services as a sole practitioner.

II. The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient shall be the same as between the client or patient and the individual performing the services.

III. Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the laws of this state, whether statutory or derived from common law, shall not be affected by reason of incorporation under this chapter. The privilege shall extend to a professional corporation, domestic or foreign, and its employees in all cases in which it shall be applicable to communications between a natural person rendering professional services on behalf of the corporation and the person receiving the services.

Source.

1981, 236:1, eff. Feb. 1, 1982.

Cross References.

Patient's privilege, see RSA 329:26.

RESEARCH REFERENCES**New Hampshire Court Rules Annotated.**

Confidentiality of information relating to legal representation, see Rule 1.6, Rules of Professional Conduct, New Hampshire Court Rules Annotated.

Lawyer-client privilege, see Rule 502, Rules of Evidence, New Hampshire Court Rules Annotated.

Patient's privilege, see Rule 503, Rules of Evidence, New Hampshire Court Rules Annotated.

294-A:19. Voting of Shares.

No proxy for shares of a professional corporation shall be valid unless it is given to a qualified person. A voting trust with respect to shares of a professional corporation shall not be valid unless all the trustees and beneficiaries of the voting trust are qualified persons, except that a voting trust may be validly continued for a

period of 10 months after the death of a deceased beneficiary or for a period of 5 months after a beneficiary has become a disqualified person.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:20. Directors and Officers.

Except as otherwise provided by the licensing laws of this state and rules adopted under these laws or by any licensing authority in this state, not less than ½ of the directors of a professional corporation and all the officers other than the secretary or an assistant secretary and the treasurer or an assistant treasurer shall be qualified persons with respect to the corporation.

Source.

1981, 236:1, eff. Feb. 1, 1982.

NOTES TO DECISIONS**Cited:**

Cited in *In re New Hampshire Disabilities Rights Ctr.*, 130 N.H. 328, 541 A.2d 208, 1988 N.H. LEXIS 19 (1988).

294-A:21. Amendments to Articles of Incorporation.

An administrator, executor, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation may amend the articles of incorporation by signing a written consent to the amendment. Articles of amendment so adopted shall be executed in duplicate by the corporation by the administrator, executor, guardian, conservator, or receiver and by the secretary or assistant secretary of the corporation, and certified by all of the persons signing the articles, and shall set forth:

I. The name of the corporation;

II. The amendments so adopted;

III. The date of adoption of the amendment by the administrator, executor, guardian, conservator or receiver;

IV. The number of shares outstanding; and

V. The number of shares held by the administrator, executor, guardian, conservator or receiver.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:22. Merger and Consolidation.

I. A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation.

II. Upon the merger or consolidation of a professional corporation, if the surviving or new

corporation is to render professional services in this state, it shall comply with this chapter.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:23. Termination of Professional Activities.

If a professional corporation ceases to render professional services, it shall, within a reasonable period of time, either dissolve and liquidate or amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of the law of this state applicable to business corporations regarding its corporate name. The corporation may then continue in existence as a corporation under the business corporation law and shall no longer be subject to the provisions of this chapter.

Source.

1981, 236:1, eff. Feb. 1, 1982.

Cross References.

Corporate name of business corporation, see RSA 293-A:4.01.

294-A:24. Involuntary Dissolution.

The secretary of state may administratively dissolve a corporation under RSA 293-A:14.21 if:

I. The corporation for 2 consecutive years does not pay within 60 days after they are due any franchise fees or penalties imposed by this chapter or other law;

II. The corporation for 2 consecutive years does not deliver its annual report to the secretary of state within 60 days after it is due;

III. The corporation is without a registered agent or registered office in this state for 60 days or more;

IV. The corporation does not notify the secretary of state within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

V. The corporation's period of duration stated in its articles of incorporation expires.

Source.

1981, 236:1, eff. Feb. 1, 1982. 2004, 248:19, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

294-A:25. Admission of Foreign Professional Corporations.

I. A foreign professional corporation shall be entitled to procure a certificate of authority to transact business in this state only if:

(a) The name of the corporation meets the requirements of this chapter;

(b) The corporation is organized only for purposes for which a professional corporation

organized under this chapter may be organized; and

(c) All the shareholders, and such of the directors and officers as are required under RSA 294-A:20 are qualified persons with respect to the corporation.

II. No foreign professional corporation shall be required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:26. Application for Certificate of Authority.

Application for a certificate of authority by a foreign professional corporation shall be to the secretary of state. The application for the purpose of rendering professional services shall include a statement that all the shareholders and those of its directors and officers as are required by the laws of its state of incorporation and by RSA 294-A:20 are licensed in one or more states, territories of the United States or the District of Columbia to render a professional service described in the statement of purpose of the corporation.

Source.

1981, 236:1, eff. Feb. 1, 1982.

294-A:27. Revocation of Certificate of Authority.

The certificate of authority of a foreign professional corporation may be revoked pursuant to RSA 293-A:14.21 by the secretary of state if the corporation fails to comply with any provision of this chapter applicable to it.

Source.

1981, 236:1, eff. Feb. 1, 1982. 2004, 248:20, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

294-A:28. Annual Report.

I. The annual report of each domestic professional corporation, and each foreign professional corporation authorized to transact business in this state, filed with the secretary of state under the law in this state applicable to business corporations shall include a statement that all the shareholders, and as many of the directors and officers as may be required under RSA 294-A:20, are qualified persons with respect to the corporation.

II. [Repealed.]

Source.

1981, 236:1. 1985, 339:16, IV, eff. June 14, 1985.

Amendments

—1985. Paragraph II: Repealed.

Cross References.
Filing of annual report, see RSA 293-A:16.22.

294-A:29. Effect of Incorporation Laws.

The law of this state applicable to business corporations shall apply to professional corporations, domestic and foreign, except to the extent that the business corporation law is inconsistent with this chapter.

Source.
1981, 236:1, eff. Feb. 1, 1982.

Cross References.
Business corporation act, see RSA 293-A.

294-A:30. Application to Existing Corporations.

This chapter shall apply to all existing associations or corporations organized under the law of this state which is superseded by this chapter. Every such existing professional association or corporation which shall be required to amend its corporate name or purposes to comply with this chapter shall deliver duly executed duplicate originals of articles of amendment or restated articles of incorporation containing the amendments to the secretary of state within 90 days after the effective date of this chapter.

Source.
1981, 236:1, eff. Feb. 1, 1982.

Editor's note.
The effective date of this section, to which reference is made in the second sentence, was February 1, 1982.

294-A:31. Effect of Repeal of Prior Acts.

The fact that any preexisting law is superceded by this chapter shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of preexisting law.

Source.
1981, 236:1, eff. Feb. 1, 1982.

CHAPTER 294-B
PRETENDED SALES

Bucket Shops

Section	
294-B:1.	Pretended Sales.
294-B:2.	Evidence.
294-B:3.	Evidence, Intent.
294-B:4.	Penalty.
294-B:5.	Second Offense.
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294-B:12.	Injunctions, Costs.

Cross References.
Investment securities, see RSA 382-A:8-101 et seq.
Securities generally, see RSA 421-B.

Bucket Shops

294-B:1. Pretended Sales.

No person or corporation shall keep, or cause to be kept, an office, store, or other place in which is conducted or permitted the pretended buying or selling of stocks, or bonds of a corporation, or petroleum, cotton, grain, provisions, pork, or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought, or of delivering the property so sold, or in which is conducted or permitted the pretended buying or selling of such property on margins, or when the party buying, or offering to buy, such property, does not intend actually to receive the same if purchased, or to deliver it if sold.

Source.
1909, 43:1. PL 384:23. RL 447:21. RSA 577:19. 1973, 532:18, eff. Nov. 1, 1973.

294-B:2. Evidence.

Whenever stocks or bonds are in any manner quoted in such places, or the terms "corporations," "association," or "company," or any abbreviation thereof, are used therein and therewith, it shall be prima facie evidence that such stocks or bonds are the stocks or bonds of then going corporations.

Source.
1909, 43:1. PL 384:24. RL 447:22. RSA 577:20. 1973, 532:18, eff. Nov. 1, 1973.

RESEARCH REFERENCES

New Hampshire Trial Bar News.
For Article, "Presumptions in New Hampshire Law—A Guide Through the Impenetrable Jungle (Part 1)," see 10 N.H.Trial Bar News 55, 60 n.82 (Winter 1990).

294-B:3. Evidence, Intent.

Whenever such securities or commodities are not actually received when purchased, or actually delivered when sold, it shall be prima facie evidence that such property was sold or purchased without any intention of receiving it or paying for or delivering it, that it was bought or sold on a margin, and that the parties buying or selling or offering to buy or sell such property did not intend actually to receive or deliver the same.

Source.
1909, 43:1. PL 384:25. RL 447:23. RSA 577:21. 1973, 532:18, eff. Nov. 1, 1973.

RESEARCH REFERENCES

New Hampshire Trial Bar News.
For Article, "Presumptions in New Hampshire Law—A

Guide Through the Impenetrable Jungle (Part 1)," see 10 N.H. Trial Bar News 55, 60 n.82 (Winter 1990).

294-B:4. Penalty.

A person or corporation, whether acting individually or for another person, or as a member, officer, agent or employee of a corporation, who violates any of the foregoing provisions of this chapter, shall be, if a natural person guilty of a misdemeanor, and any other person shall be guilty of a felony.

Source.

1909, 43:2. PL 384:26. RL 447:23. RSA 577:21. 1973, 532:18, eff. Nov. 1, 1973.

Revision note.

Substituted "chapter" for "subdivision" to correct an error in the reference.

Cross References.

Classification of crimes, see RSA 625:9.

Sentences, see RSA 651.

294-B:5. Second Offense.

The continuance of such establishment after a first conviction shall be deemed a second offense.

Source.

1909, 43:2. PL 384:27. RL 447:25. RSA 577:23. 1973, 532:18, eff. Nov. 1, 1973.

294-B:6. Completion of Offense.

The offense shall be complete as against a person or corporation pretending or offering to sell or to buy, as provided herein, whether the offer to sell or buy is accepted or not; and a person or corporation communicating, receiving, exhibiting or displaying in any manner such offer to so buy or sell, or any statements or quotations of the prices of such property, with a view to such transaction, shall be deemed an accessory, and shall be punished as provided in RSA 294-B:4.

Source.

1909, 43:3. PL 384:28. RL 447:26. RSA 577:24. 1973, 532:18, eff. Nov. 1, 1973.

294-B:7. Statement of Sale.

A person or corporation doing business as a commission merchant or broker shall furnish, on demand, to any customer or principal for whom such person or corporation has executed an order for the actual purchase or sale of any of the commodities mentioned in the preceding sections, either for immediate or future delivery, a written statement containing the names of the parties from whom such property was bought, or to whom sold, the time when, place where, and price at which the same was bought or sold.

Source.

1909, 43:4. PL 384:29. RL 447:27. RSA 577:25. 1973, 532:18, eff. Nov. 1, 1973.

294-B:8. Refusal to Furnish Statement.

A refusal promptly to furnish such statement upon reasonable demand shall be prima facie evidence that such property was not bought or sold in a legitimate manner.

Source.

1909, 43:4. PL 384:30. RL 447:28. RSA 577:26. 1973, 532:18, eff. Nov. 1, 1973.

RESEARCH REFERENCES

New Hampshire Trial Bar News.

For Article, "Presumptions in New Hampshire Law—A Guide Through the Impenetrable Jungle (Part 1)," see 10 N.H. Trial Bar News 55, 60 n.82 (Winter 1990).

294-B:9. Injunctions.

When a prosecution is commenced for the violation of any of the provisions of this chapter the attorney-general or county attorney may petition the superior court to enjoin the carrying on of such unlawful business in the place where a complaint, information, or indictment charges that it has been conducted.

Source.

1909, 43:5. PL 384:31. RL 447:29. RSA 577:27. 1967, 132:37. 1973, 532:18, eff. Nov. 1, 1973.

Revision note.

Substituted "chapter" for "subdivision" to correct an error in the reference.

294-B:10. Procedure.

The court shall hear and determine such petition, and may permanently enjoin the person, firm or corporation, shown to have kept such place, or caused it to be kept, from conducting such prohibited business therein.

Source.

1909, 43:5. PL 384:32. RL 447:30. RSA 577:28. 1973, 532:18, eff. Nov. 1, 1973.

294-B:11. Temporary Orders.

The court may, upon petition therefor in such proceeding, issue a temporary injunction to effect the closing of such place against such unlawful business during the pendency of the petition.

Source.

1909, 43:5. PL 384:33. RL 447:31. RSA 577:29. 1973, 532:18, eff. Nov. 1, 1973.

294-B:12. Injunctions, Costs.

The cost of such proceedings, in case the state prevails, shall be taxed against the defendant.

Source.

1909, 43:5. PL 384:34. RL 447:32. RSA 577:30. 1973, 532:18, eff. Nov. 1, 1973.

CHAPTER 294-C**FRAUDULENT OR UNAUTHORIZED
ISSUE OF STOCK****Section**

294-C:1.	Limits of Issue.
294-C:2.	Officer's Liability.
294-C:3.	False Issue.
294-C:4.	False Stock Record.
294-C:5.	False Records.
294-C:6.	General Penalty.

294-C:1. Limits of Issue.

No corporation shall increase its capital stock beyond the maximum amount fixed by its charter or otherwise authorized by law, or divide the proceeds of the sale of its stock among its stockholders, or issue certificates of stock when the par value of the shares represented by the certificates has not been fully paid to its treasurer. All certificates issued for such unauthorized stock shall be void.

Source.

1870, 17:1, 2. GL 158:9, 10. PS 273:11. PL 387:18. RL 450:17. RSA 580:17. 1973, 532:22, eff. Nov. 1, 1973.

NOTES TO DECISIONS**ANNOTATIONS UNDER FORMER RSA 580:17****Construction**

The capitalization of surplus earnings by a corporation, by means other than a stock dividend, is not prohibited by this section. *Grafton County Elec. Light & Power Co. v. State*, 77 N.H. 539, 94 A. 193 (1915).

Where stock of a corporation is transferred to it as a gift, the directors have no authority to give it away, sell it for less than the par value, or use it for engaging in a business other than that specified in the articles of incorporation. *Kimball v. New England Roller Grate Co.*, 69 N.H. 485, 45 A. 253, 1898 N.H. LEXIS 59 (1898).

294-C:2. Officer's Liability.

Any of its directors or other officers or agents who shall take part in any such unauthorized increase or disposition of its capital stock, or in the distribution of the proceeds thereof, or in the issue of certificates of stock when not authorized by law, shall be severally guilty as principals of the offenses described in RSA 294-C:1.

Source.

1870, 17:1, 2. GL 158:9, 10. PS 273:11. PL 387:19. RL 450:18. RSA 580:18. 1973, 532:22, eff. Nov. 1, 1973.

294-C:3. False Issue.

No officer, agent, or servant of a corporation, or any other person, shall knowingly, falsely, and fraudulently issue a certificate for any stock of the corporation, or shall fraudulently sign any such certificate in blank or otherwise with

the intent that it shall be so issued by himself or any other person.

Source.

1854, 1520:1. GS 257:10. GL 275:10. PS 273:12. PL 387:20. RL 450:19. RSA 580:19. 1973, 532:22, eff. Nov. 1, 1973.

NOTES TO DECISIONS**ANNOTATIONS UNDER FORMER RSA 580:19****Intent**

The treasurer of a corporation who, upon surrender to him of a valid certificate of outstanding stock to be issued in excess of the authorized amount, could not be convicted of knowingly, falsely, and fraudulently issuing the new certificate, although at the time of its stock, issued a new certificate for the same number of shares and subsequently reissued the original certificate, thereby causing the issue his intention was not to retire the original certificate but to reissue it. *State v. Moore*, 69 N.H. 99, 39 A. 584, 1896 N.H. LEXIS 16 (1896).

294-C:4. False Stock Record.

No officer, agent, or servant of a corporation whose duty it is to keep a record of the certificates of stock issued by the corporation, and of the stockholders in the corporation, shall fraudulently omit to make and keep a true record of any certificate issued or transfer made, or of the stockholders of the corporation, or fraudulently make a false record of any such certificate or transfer, or of such stockholders, with intent to defraud.

Source.

PS 273:13. PL 387:21. RL 450:20. RSA 580:20. 1973, 532:22, eff. Nov. 1, 1973.

294-C:5. False Records.

No officer, agent, or servant of a corporation shall fraudulently make any false entry or record in any book of the corporation, with intent to defraud, which is not prohibited by RSA 294-C:4.

Source.

PS 273:14. PL 387:22. RL 450:21. RSA 580:21. 1973, 532:22, eff. Nov. 1, 1973.

294-C:6. General Penalty.

If any officer, agent, or servant of a corporation shall violate any provision of this chapter or shall wilfully or fraudulently violate any provision of law for the government of corporations, their officers, agents, and servants, for which other punishment is not specially prescribed, he shall be guilty of a class B felony.

Source.

RS 146:25. CS 147:30; 150:69. GS 145:10, 11; 257:11. GL 275:11. PS 273:15. PL 387:23. RL 450:22. RSA 580:22. 1973, 532:22, eff. Nov. 1, 1973.

Cross References.

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

CHAPTER 294-E

UNIFORM ELECTRONIC TRANSACTIONS ACT

Section	Short Title.
294-E:1.	Definitions.
294-E:2.	Scope.
294-E:3.	Prospective Application.
294-E:4.	Use of Electronic Records and Electronic Signatures; Variation by Agreement.
294-E:5.	Construction and Application.
294-E:6.	Legal Recognition of Electronic Records, Electronic Signatures, and Electronic Contracts.
294-E:7.	Provision of Information in Writing; Presentation of Records.
294-E:8.	Attribution and Effect of Electronic Record and Electronic Signature.
294-E:9.	Effect of Change or Error.
294-E:10.	Notarization and Acknowledgment.
294-E:11.	Retention of Electronic Records; Originals.
294-E:12.	Admissibility in Evidence.
294-E:13.	Automated Transaction.
294-E:14.	Time and Place of Sending and Receipt.
294-E:15.	Transferable Records.
294-E:16.	Creation and Retention of Electronic Records and Conversion of Written Records by Governmental Agencies.
294-E:17.	Acceptance and Distribution of Electronic Records by Governmental Agencies.
294-E:18.	Interoperability.
294-E:19.	Severability Clause.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:1. Short Title.

This chapter may be cited as the Uniform Electronic Transactions Act.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:2. Definitions.

In this chapter:

I. “Agreement” means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

II. “Automated transaction” means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

III. “Computer program” means a set of statements or instructions to be used directly or indirectly in an information processing system

in order to bring about a certain result.

IV. “Contract” means the total legal obligation resulting from the parties’ agreement as affected by this chapter and other applicable law.

V. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

VI. “Electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

VII. “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

VIII. “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

IX. “Governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

X. “Information” means data, text, images, sounds, codes, computer programs, software, databases, or the like.

XI. “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

XII. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

XIII. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

XIV. “Security procedure” means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

XV. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

XVI. “Transaction” means an action or set of actions occurring between 2 or more persons

relating to the conduct of business, commercial, or governmental affairs.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:3. Scope.

I. Except as otherwise provided in paragraph II, this chapter applies to electronic records and electronic signatures relating to a transaction.

II. This chapter does not apply to a transaction to the extent it is governed by:

(a) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(b) The Uniform Commercial Code other than Sections 1-107 and 1-206, Article 2, and Article 2A.

III. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under paragraph II to the extent it is governed by a law other than those specified in paragraph II.

IV. This chapter is not intended to modify, limit, or supersede the requirements of Section 101(c), (d), or (e), or to authorize the electronic delivery of any notice of the type described in Section 103(b) of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229.

V. A transaction subject to this chapter is also subject to other applicable substantive law.

Source.

2001, 265:1, eff. Sept. 11, 2001.

References in text.

Section 101(c), (d), or (e), and section 103(b) of the Electronic Signatures in Global and National Commerce Act, referred to in par. IV, are classified to 15 U.S.C.S. §§ 7001(c), (d), (e), and 7003(b), respectively.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:4. Prospective Application.

This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this chapter.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:5. Use of Electronic Records and Electronic Signatures; Variation by Agreement.

I. This chapter does not require a record or signature to be created, generated, sent, com-

municated, received, stored, or otherwise processed or used by electronic means or in electronic form.

II. This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

III. A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this paragraph may not be waived by agreement.

IV. Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

V. Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:6. Construction and Application.

This chapter shall be construed and applied to:

I. Facilitate electronic transactions consistent with other applicable law.

II. Be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.

III. Effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:7. Legal Recognition of Electronic Records, Electronic Signatures, and Electronic Contracts.

I. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

II. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

III. If a law requires a record to be in writing, an electronic record satisfies the law.

IV. If a law requires a signature, an electronic signature satisfies the law.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:8. Provision of Information in Writing; Presentation of Records.

I. If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

II. If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(a) The record must be posted or displayed in the manner specified in the other law.

(b) Except as otherwise provided in subparagraph IV(b), the record must be sent, communicated, or transmitted by the method specified in the other law.

(c) The record must contain the information formatted in the manner specified in the other law.

III. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

IV. The requirements of this section may not be varied by agreement, but:

(a) To the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under paragraph I that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than this chapter to send, communicate, or transmit a record by first-class mail, postage prepaid, or by regular United States mail may be varied by agreement to the extent permitted by the other law.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:9. Attribution and Effect of Electronic Record and Electronic Signature.

I. An electronic record or electronic signature

is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

II. The effect of an electronic record or electronic signature attributed to a person under paragraph I is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:10. Effect of Change or Error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

I. If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

II. In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(a) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(b) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(c) Has not used or received any benefit or value from the consideration, if any, received from the other person.

III. If neither paragraph I nor paragraph II applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

IV. Paragraphs II and III may not be varied by agreement.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:11. Notarization and Acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:12. Retention of Electronic Records; Originals.

I. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) Remains accessible and is capable of being accurately reproduced for later reference.

II. A requirement to retain a record in accordance with paragraph I does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

III. A person may satisfy paragraph I by using the services of another person if the requirements of that paragraph are satisfied.

IV. If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with paragraph I.

V. If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with paragraph I.

VI. A record retained as an electronic record in accordance with paragraph I satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this chapter specifically prohibits the use of an electronic record for the specified purpose.

VII. This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:13. Admissibility in Evidence.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:14. Automated Transaction.

In an automated transaction, the following rules apply:

I. A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

II. A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

III. The terms of the contract are determined by the substantive law applicable to it.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:15. Time and Place of Sending and Receipt.

I. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) Is in a form capable of being processed by that system; and

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

II. Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) It is in a form capable of being processed by that system.

III. Paragraph II applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under paragraph IV.

IV. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this paragraph, the following rules apply:

(a) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

V. An electronic record is received under paragraph II even if no individual is aware of its receipt.

VI. Receipt of an electronic acknowledgment from an information processing system described in paragraph II establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

VII. If a person is aware that an electronic record purportedly sent under paragraph I, or purportedly received under paragraph II, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this section may not be varied by agreement.

Source.

2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.

This chapter comprising of RSA 294-E:1-294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:16. Transferable Records.

I. In this section, "transferable record" means an electronic record that:

(a) Would be a note under Article 3 of the Uniform Commercial Code or a document under Article 7 of the Uniform Commercial Code if the electronic record were in writing; and

(b) The issuer of the electronic record expressly has agreed is a transferable record.

II. A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

III. A system satisfies paragraph II, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(a) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in subparagraphs (d), (e), and (f), unalterable;

(b) The authoritative copy identifies the person asserting control as:

(1) The person to which the transferable record was issued; or

(2) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

IV. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 1-201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Section 3-302(a), 7-501, or 9-308 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this paragraph.

V. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

VI. If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and

to establish the identity of the person having control of the transferable record.

Source.
2001, 265:1, eff. Sept. 11, 2001.

References in text.
Article 3 and Article 7 of the Uniform Commercial Code, referred to in par. I(a), are classified to RSA 382-A.

Severability of enactment.
This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:17. Creation and Retention of Electronic Records and Conversion of Written Records by Governmental Agencies.

The department of administrative services, in cooperation with the secretary of state, shall determine whether, and the extent to which, a governmental agency will create and retain electronic records and convert written records to electronic records.

Source.
2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.
This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:18. Acceptance and Distribution of Electronic Records by Governmental Agencies.

I. Except as otherwise provided in RSA 294-E:12, VI, department of administrative services, in cooperation with the secretary of state, shall determine whether, and the extent to which, a governmental agency will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

II. To the extent that a governmental agency uses electronic records and electronic signatures under paragraph I, the department of administrative services, in cooperation with the secretary of state, giving due consideration to security, may specify:

(a) The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(b) If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(c) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(d) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

III. Except as otherwise provided in RSA 294-E:12, VI, this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

Source.
2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.
This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:19. Interoperability.

The department of administrative services, in cooperation with the secretary of state, after adopting standards pursuant to RSA 294-E:18, may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

Source.
2001, 265:1, eff. Sept. 11, 2001.

Severability of enactment.
This chapter comprising of RSA 294-E:1–294-E:20, is subject to a severability clause. See RSA 294-E:20.

294-E:20. Severability Clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Source.
2001, 265:1, eff. Sept. 11, 2001.

**CHAPTER 295
GENERAL POWERS OF
CORPORATIONS**

Meetings, Bylaws, Reports, etc.

Section	
295:1.	Exceptions.
295:2.	Inclusions.
295:3.	Powers.
295:4.	First Meeting.
295:5.	Bylaws.
295:6.	Contracts.
295:7.	Property.
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Section	
295:7-b.	Power to Lease.
295:8.	Taking Security.
295:9.	Alteration of Date of Annual Meeting.
295:10.	Fees for Copies of Records, etc.
295:11.	Reserved Power; Limitation.

Cross References.

General powers of business corporations, see RSA 293-A:3.02.

NOTES TO DECISIONS**Cited:**

Cited in Opinion of the Justices, 106 N.H. 180, 207 A.2d 574, 1965 N.H. LEXIS 125 (1965).

Meetings, Bylaws, Reports, etc.**295:1. Exceptions.**

The provisions of this chapter do not apply to public municipal corporations, such as towns and cities. They do not apply to corporations organized under or adopting the provisions of RSA 294 and 301, excepting the provisions of RSA 295:10 and 11, and also RSA 297.

Source.

GS 133:1. GL 147:1. PS 148:1. PL 226:1. 1931, 104:1. RL 275:1.

References in text.

The references to RSA 294, 301 and 297, respectively, in the second sentence are obsolete. RSA 294, relative to business corporations, RSA 301, relative to foreign corporations, and RSA 297, relative to voting trusts, were repealed by 1981, 557:2, effective February 1, 1982. RSA 293-A, which deals with the subject matter formerly covered by the repealed chapters, was enacted by 1981, 557:1, effective February 1, 1982.

295:2. Inclusions.

The rights, powers and duties set forth in this chapter are incident to all corporations legally constituted not excepted in RSA 295:1, subject to any limitations or restrictions imposed by their charters or articles of association or the laws under which they were organized.

Source.

GS 133:2. GL 147:2. PS 148:2. PL 226:2. RL 275:2.

Cross References.

Contents of articles of agreement of voluntary corporations and associations generally, see RSA 292:2, 2-a.

295:3. Powers.

Every such corporation may admit associates and members, and for just cause remove them; may elect all necessary officers, define their duties and fix their compensation; may have a common seal, and change the same at pleasure; may sue and be sued, appear, prosecute and defend in the corporate name to final judgment and execution, and appoint agents and attorneys for that purpose; and shall have perpetual succession, unless incorporated or formed for a limited term or dissolved as provided by law.

Source.

RS 145:4, 9. CS 152:4, 7. GS 133:3. GL 147:3. PS 148:3. PL 226:3. RL 275:3.

NOTES TO DECISIONS

1. Common law
2. Source of powers
3. Officers
4. Seal
5. Actions by or against
6. Agents

1. Common law

The common law gives to all corporations the powers belonging to corporations of their class unless there is something in the nature of the corporation or in the terms of its charter or act of incorporation inconsistent with the exercise of such powers or there is some general statute restricting their powers. *Smith v. Nashua & Lowell Railroad Co.*, 27 N.H. 86, 1853 N.H. LEXIS 6 (1853).

2. Source of powers

Corporations have no powers except such as is given them by their charters or such as are incidental and necessary to carry into effect the purposes for which they were established. *Downing v. Mount Wash. Rd. Co.*, 40 N.H. 230, 1860 N.H. LEXIS 140 (1860).

3. Officers

Every corporation has an incidental power of accepting the resignation of its officers. *Cloutman v. Pike*, 7 N.H. 209, 1834 N.H. LEXIS 17 (1834).

4. Seal

Corporations may use a seal with a peculiar device if they have adopted such, or they may adopt for the occasion a seal of any device, or a paper or wafer without any mark and if they have adopted a peculiar seal, it may be proved to be their seal by anyone who is acquainted with the device or motto; and when thus proved it will be presumed to have been properly affixed. *Tenney v. East Warren Lumber Co.*, 43 N.H. 343, 1861 N.H. LEXIS 85 (1861).

5. Actions by or against

Whether a corporation has been legally organized or not, or whether it has complied with the requirements of the charter or laws or not, is immaterial in an action by or against it. *Haynes v. Brown*, 36 N.H. 545, 1858 N.H. LEXIS 119 (1858).

6. Agents

Ratification by a corporation of the act of an agent is equivalent to prior authority. *Despatch Line of Packets v. Bellamy Mfg. Co.*, 12 N.H. 205, 1841 N.H. LEXIS 30 (1841).

295:4. First Meeting.

Any 3 of the 5 grantees first named in the charter of a corporation (unless otherwise provided therein), or any 3 of the first 5 signers of the articles of agreement by which a corporation is formed, may call the first meeting of the members or stockholders by giving to each in hand, or leaving at the abode of each, or by sending through the mails, postpaid, to the post office address of each, a notice of the time and place of the meeting, 7 days at least before the day of meeting. Such meeting may be held without previous notice if all the members or stockholders voluntarily assemble together for the purpose, or it may be so held at a time and place to which they have all agreed in writing.

Source.

PS 148:4. PL 226:4. RL 275:4.

295:5. Bylaws.

Such corporations may adopt bylaws, not repugnant to the laws of this state, to provide for the election, removal and retiring of members; to fix the times and places of holding meetings and the manner of calling and conducting them; to regulate the number of officers, the manner of choosing them, their tenure of office and their powers and duties; and to promote the objects of the corporation; and they may alter and amend such bylaws.

Source.

RS 144:3. CS 152:6. GS 133:4. GL 147:4. PS 148:6. PL 226:5. RL 275:5.

Cross References.

Bylaws adopted prior to completion of organization, see RSA 292:6.

Powers of corporations generally, see RSA 295:3.

NOTES TO DECISIONS

1. Common law
2. Scope of authority
3. Evidence
4. Notice of meeting

1. Common law

In providing that corporations may "adopt bylaws not repugnant to the laws of this state" the statute affirms the general rule of the common law. *Jones v. Concord & M.R.R.*, 67 N.H. 119, 38 A. 120, 1891 N.H. LEXIS 20 (1892).

2. Scope of authority

The power to make bylaws, where not expressly given, is implied as incident to the very existence of a corporation; but in the case of an express grant of the power to enact bylaws limited to certain specified cases and for certain purposes, the corporate power of legislation is confined to the objects specified, all others being excluded by implication. *State v. Ferguson*, 33 N.H. 424, 1856 N.H. LEXIS 94 (1856).

3. Evidence

What a corporation's bylaws are, and the authority conferred by them, is to be ascertained by the production of the bylaws themselves and not by the testimony of an officer. *Lumbard v. Aldrich*, 8 N.H. 31, 1835 N.H. LEXIS 5 (1835).

4. Notice of meeting

A notice of meeting which conforms to the bylaws is sufficient. *Phenix Mut. Fire Ins. Co. v. Rouillard*, 92 N.H. 228, 29 A.2d 134, 1942 N.H. LEXIS 64 (1942).

295:6. Contracts.

They may make contracts necessary and proper for the transaction of their authorized business, and no other. They shall be capable of binding themselves as sureties or guarantors for others, to the extent that such suretyship or guarantee may be necessary and proper for the transaction of their authorized business or serves to further their corporate purposes.

Source.

GS 133:5. GL 147:5. PS 148:7. PL 226:6. RL 275:6. RSA 295:6. 1988, 13:1, eff. May 14, 1988.

Amendments

—1988. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Powers of corporations generally, see RSA 295:3.

295:7. Property.

They may purchase, hold and convey real and personal estate necessary and proper for the due transaction of their authorized business, not exceeding the amount authorized by their charter or by statute, and no other.

Source.

RS 145:7. CS 152:7. GS 133:6. GL 147:6. PS 148:8. PL 226:7. RL 275:7.

Cross References.

Powers of corporations generally, see RSA 295:3.

NOTES TO DECISIONS**Trustee powers**

A corporation empowered to establish an institution for the instruction of youth may not be a trustee to hold funds and pay over the income for the support of missionaries. *Trustees of S. Newmarket Methodist Seminary v. Peaslee*, 15 N.H. 317, 1844 N.H. LEXIS 134 (1844).

Cited:

Cited in *Horseshoe Fish & Game Club v. Merrimack Village Dist.*, 112 N.H. 94, 291 A.2d 251, 1972 N.H. LEXIS 150 (1972).

295:7-a. Bonds and Other Obligations.

Every such corporation may incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations and refund the same and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

Source.

1965, 74:2, eff. April 30, 1965.

Cross References.

Powers of corporations generally, see RSA 295:3.

295:7-b. Power to Lease.

Every such corporation may make or enter into lease agreements, either as lessee or lessor, to carry out any of its corporate purposes.

Source.

1965, 74:2, eff. April 30, 1965.

Cross References.

Powers of corporations generally, see RSA 295:3.

NOTES TO DECISIONS**Cited:**

Cited in *Horseshoe Fish & Game Club v. Merrimack Village Dist.*, 112 N.H. 94, 291 A.2d 251, 1972 N.H. LEXIS 150 (1972).

295:8. Taking Security.

They may take mortgages or pledges or make attachments of any property to secure the payment of debts due to them, and may perfect a title thereto by proper legal proceedings; but they shall sell or dispose of any property so

obtained, which they are not authorized to hold, within 5 years after the title is perfected.

Source.

GS 133:7. GL 147:7. PS 148:9. PL 226:8. RL 275:8.

Cross References.

Powers of corporations generally, see RSA 295:3.

295:9. Alteration of Date of Annual Meeting.

A corporation, at any legal meeting, may alter the time of holding its annual meeting.

Source.

RS 146:24. CS 147:33. GS 133:14. GL 147:14. PS 148:15. PL 226:9. RL 275:9.

295:10. Fees for Copies of Records, etc.

Officers of private corporations, when required to furnish copies or certificates or to examine records, shall be entitled to the same fees as registers of deeds.

Source.

PS 287:27. PL 226:11. RL 275:11.

Cross References.

Fees of registers of deeds, see RSA 478:17-g.

295:11. Reserved Power; Limitation.

The legislature may at any time alter, amend or repeal the charter of any corporation, or the law under which it was established, or may modify or amend any of its franchises, duties or liabilities; but the remedy against the corporation, its members or officers, for any liability previously incurred, shall not be impaired thereby.

Source.

RS 146:26.1847, 487:2. GS 133:18. GL 147:18. PS 148:19. PL 226:12. RL 275:12.

NOTES TO DECISIONS

- 1. Scope of power
- 2. Repeal of charter provisions

1. Scope of power

The power reserved in this section covers every aspect of corporate life and activity which constitutional limitations permit. *Lorenz v. Stearns*, 85 N.H. 494, 161 A. 205, 1932 N.H. LEXIS 112 (1932), cert. denied and appeal dismissed, 287 U.S. 565, 53 S. Ct. 23, 77 L. Ed. 498, 1932 U.S. LEXIS 827 (1932).

Under this section the legislature has power to control a public utility corporation in its dealings with the public. *Rockingham County Light & Power Co. v. Hobbs*, 72 N.H. 531, 58 A. 46, 1904 N.H. LEXIS 52, 66 L.R.A. 581 (1904).

2. Repeal of charter provisions

A state may repeal a tax exemption clause in a corporate charter. *Trustees of Exeter Academy v. Exeter*, 90 N.H. 472, 27 A.2d 569, 1940 N.H. LEXIS 67 (1940).

No repeal of the charter of a corporation can take away or impair the remedy of a creditor against it for a previously incurred liability, or affect a pending suit against it. *Blake v. Portsmouth & C.R.R.*, 39 N.H. 435, 1859 N.H. LEXIS 56 (1859).

CHAPTER 296

DIVIDEND-PAYING CORPORATIONS

Incidents, Organization, and Officers

Section

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- 296:42. Contribution.
- 296:43. Recovery From Corporation.

Cross References.

Payment of dividends by business corporations generally, see RSA 293-A:6.01 et seq.

Incidents, Organization, and Officers

296:1. Corporations Included.

The rights, powers and duties set forth in this chapter shall be incident to all corporations having for their object a dividend of profits,

hereinafter incorporated, or whose charters are by law subject to be altered, amended or repealed, excepting savings banks, building and loan associations and corporations organized under or adopting the provisions of RSA 294, and their officers and members shall be governed by its provisions.

Source.

RS 146:1. CS 147:1. GS 134:1. GL 148:1. PS 149:1. PL 227:1. RL 276:1.

References in text.

The reference to RSA 294 at the end of the section is obsolete. RSA 294, relative to business corporations, was repealed by 1981, 557:2, effective February 1, 1982. RSA 293-A, which deals with the subject matter formerly covered by RSA 294, was enacted by 1981, 557:1, effective February 1, 1982 and repealed and reenacted by 1992, 255:1, effective January 1, 1993.

296:2. Time Limit for Organization.

Every such corporation shall be organized within 3 years from the passage of its act of incorporation; otherwise the act shall become void.

Source.

1846, 321:7. CS 147:35. GS 134:2. GL 148:2. PS 149:2. PL 227:2. RL 276:2.

Cross References.

Applicability of chapter, see RSA 296:1.

NOTES TO DECISIONS

De facto organization

A de facto organization of a corporation under color of the charter is an organization under the charter within the meaning of this section. *Ossipee Hosiery & Woolen Manufacturing Co. v. Canney*, 54 N.H. 295, 1874 N.H. LEXIS 37 (1874).

296:3. Directors; President.

The directors, to be chosen annually by the stockholders, shall not be less than 3, unless otherwise authorized by the charter, and one of them at least shall be an actual resident of this state, if the corporation has any stockholders residing in the state. They shall hold office for one year and until others are chosen and qualified in their stead, and one of them shall be chosen president by the corporation or by the directors, as the charter or bylaws may prescribe.

Source.

RS 141:3. CS 149:3. GS 134:4. 1874, 25:1. GL 147:3; 148:4. PS 149:4. PL 227:3. RL 276:3.

NOTES TO DECISIONS

Corporate contracts

The president and treasurer of a corporation may not, without authority from the corporation, bind it by a contract in its behalf. *Holland v. Laconia Bldg. & Loan Ass'n*, 68 N.H. 480, 41 A. 178, 1896 N.H. LEXIS 36 (1896).

Capital Stock and Shares

296:4. Amount; Par Value.

If the amount of the capital stock of a corporation is not fixed by its charter it shall be fixed and limited by the corporation at its first meeting, and also the number and par value of the shares thereof; but the par value of the shares shall in no case be fixed below \$25.

Source.

RS 141:7. CS 149:7. GS 134:5. GL 148:5. PS 149:5. PL 227:4. RL 276:4.

296:5. Vote to Issue.

Any corporation now existing, or which may hereafter be established under the laws of this state, which has a capital stock and has among its objects a division of profits among its stockholders, may vote to issue shares of its capital stock to an amount not less than 50 percent of the total amount lawfully fixed and limited.

Source.

1915, 80:1. PL 227:5. RL 276:5.

296:6. Payment; Certificate.

If any such corporation shall so vote, it shall thereupon cause to be filed in the office of the clerk of the town in which its principal place of business is located, and in the office of the secretary of state, a certified copy of the vote and a certificate under oath, signed by its treasurer and a majority of its directors, stating the total amount of capital stock which the corporation is authorized to issue, the total amount which it has voted to issue and that the whole amount of capital stock which the corporation has so voted to issue has been paid in in cash or property at a fair valuation.

Source.

1915, 80:1. PL 227:6. RL 276:6.

Cross References.

Voting upon issuance of capital stock, see RSA 296:5.

296:7. Increase, etc., of Stock.

The corporation, at any meeting called for the purpose, may increase or reduce its capital stock and the number of shares into which it is divided, within the limits authorized by law.

Source.

RS 141:9. CS 149:9. GS 134:6. GL 148:6. PS 149:6. PL 227:7. RL 276:7.

NOTES TO DECISIONS

1. Notice of meeting
2. Expansion of business
3. Reduction of stock

1. Notice of meeting

Where notice of annual meeting did not state that an

increase of capital was one of the purposes for which the meeting was called, nor inform the stockholders that an increase would be submitted to them, increase of capital stock was not unauthorized by a vote at that meeting, notwithstanding bylaw which provided that any business within the power of the corporation could be transacted at annual meetings, although the subject matter thereof was not specified in the notice. *Jones v. Concord & M.R.R.*, 67 N.H. 119, 38 A. 120, 1891 N.H. LEXIS 20 (1892).

2. Expansion of business

A stockholder's agreement that the company may increase the capital to the amount authorized by law gives no authority to enlarge the sphere of business by which the company was formed. *Jones v. Concord & M.R.R.*, 67 N.H. 119, 38 A. 120, 1891 N.H. LEXIS 20 (1892).

3. Reduction of stock

A corporation cannot reduce its capital stock by purchasing the shares of any stockholder, but may do so by allowing each stockholder to surrender such proportion of his stock as the amount of the proposed reduction bears to the whole amount of capital stock. *Currier v. Lebanon Slate Co.*, 56 N.H. 262, 1875 N.H. LEXIS 41 (1875).

296:8. Change of Par Value.

Such corporation, by unanimous vote of all the shares represented at any meeting called for the purpose, or by the written consent of all the stockholders filed with the clerk, may increase or diminish the number of its shares, and thereby increase or diminish the par value thereof; but the capital stock shall not be increased or diminished thereby, and the par value of the shares shall not be fixed below \$25.

Source.

1855, 1668:1. GS 134:7. GL 148:7. PS 149:7. 1898, 67:9. PL 227:8. RL 276:8.

Cross References.

Voting upon increase or reduction of capital stock generally, see RSA 296:7.

296:9. Classes.

A corporation may divide its capital stock into different classes of shares, giving such preferences in relation to dividends to any class as it sees fit; but the duties and liabilities of its stockholders to creditors of the corporation and to the state shall not be affected thereby.

Source.

PS 149:8. PL 227:9. RL 276:9.

296:10. Sale Price.

No corporation shall sell or dispose of any of the shares of its capital stock at a price less than the par value thereof, except in sales of shares at auction for non-payment of assessments.

Source.

1849, 860:1. CS 147:20. GS 134:8. GL 148:8. PS 149:9. PL 227:10. RL 276:10.

NOTES TO DECISIONS

1. Application of section
2. Stock held by trustees

1. Application of section

This section applied to shares of stock issued to promoters of corporation illegally and without consideration and by them transferred to be held for the benefit of the corporation. *Kimball v. New England Roller Grate Co.*, 69 N.H. 485, 45 A. 253, 1898 N.H. LEXIS 59 (1898).

The restriction on the sale of stock does not apply to the holder of stock which the corporation has pledged or mortgaged. *Peterborough Railroad v. Nashua & Lowell Railroad*, 59 N.H. 385, 1879 N.H. LEXIS 174 (1879).

2. Stock held by trustees

Where stock was issued to directors as trustees, to hold as security for capital which they loaned to the corporation on the understanding that they would transfer the stock to the subscribers when the latter had paid the amount of their subscriptions, this section did not preclude transfer of the stock to the subscribers without full payment, since surrender of the right to hold the stock certificates was not a sale or disposal of the stock by the corporation. *Lincott v. Northwood Union Shoe Co.*, 68 N.H. 260, 44 A. 392, 1895 N.H. LEXIS 1 (1895).

296:11. Certificates.

Every stockholder shall be entitled to a certificate or certificates signed by the treasurer or cashier and such other officers of the corporation as the bylaws may prescribe, stating his ownership of the shares belonging to him; but no certificate shall be issued until the par value of the shares mentioned in it has been fully paid to the corporation.

Source.

RS 141:8. CS 149:8. 1866, 4224:9. GS 134:9. GL 148:9. PS 149:10. PL 227:11. RL 276:11.

NOTES TO DECISIONS

Evidence of ownership

The proper and usual evidence that a party plaintiff is a stockholder of the corporation is the production and proof of his certificate. *Haynes v. Brown*, 36 N.H. 545, 1858 N.H. LEXIS 119 (1858).

296:12. Stockholder's Residence.

Every stockholder of a corporation shall inform the treasurer, cashier or other officer authorized to issue stock certificates, of the place of his residence, and of every change therein, forthwith after the change is made.

Source.

PS 149:11. PL 227:12. RL 276:12.

296:13. Stock Record.

The treasurer, cashier or other officer authorized to issue stock certificates of a corporation, shall keep in his office, in books provided for the purpose, a true record of the names and residences of all stockholders of the corporation, of all changes in their residences of which he is informed, of the number of shares owned by each stockholder, of all transfers of shares and of every certificate issued by him; and shall keep on file all old certificates, transfers and deeds of shares delivered to him.

Source.

1860, 2353:1. GS 57:9; 134:10, 14. GL 62:9; 148:10, 14. PS 149:12. PL 227:13. RL 276:13.

NOTES TO DECISIONS**Evidence of transfer**

A stockbook is competent evidence on the question of the transfer of stock. *Preston v. Cutter*, 64 N.H. 461, 13 A. 874, 1887 N.H. LEXIS 53 (1887).

296:14. Restraint of Sale.

No corporation shall make any bylaw to restrain the free sale of shares of its stock; every such bylaw shall be void.

Source.

1849, 860:2. CS 147:21. GS 134:13. GL 148:13. PS 149:15. PL 227:14. RL 276:14.

Capitalizing Surplus**296:15. Authority.**

Any corporation now existing, or which may hereafter be established under the laws of this state, which has a capital stock and has among its objects a division of profits among its stockholders, may capitalize its undivided surplus profits by issuing to its stockholders certificates of stock representing their respective shares of the whole, or such part thereof as the corporation may determine, of any surplus profits belonging to the corporation and represented by cash or property.

Source.

1915, 82:1. PL 227:15. RL 276:15.

296:16. Conditions.

For this surplus the corporation may increase its capital stock within the limits provided by law; but no stock representing undivided surplus profits shall be authorized to be issued at less than par, nor until a certified copy of the vote authorizing the same, and a certificate as hereinafter provided, shall have been recorded in the office of the clerk of the town in which its principal place of business is located and in the office of the secretary of state.

Source.

1915, 82:1. PL 227:16. RL 276:16.

Cross References.

Authorization of issue of capital stock representing undivided surplus profits, see RSA 296:15.

Contents of certificate of vote authorizing issue of stock representing undivided surplus profits, see RSA 296:17.

296:17. Certificate.

The certificate aforesaid shall be under oath and signed by the treasurer and a majority of the directors, and shall state the number of shares and the par value thereof issued to represent surplus profits, and that said stock

represents cash or property at a fair valuation owned by the corporation.

Source.

1915, 82:1. PL 227:17. RL 276:17.

Cross References.

Requirement of certification as to vote upon issuance of capital stock representing undivided surplus profits generally, see RSA 296:16.

296:18. Exceptions.

The provisions of this subdivision shall not apply to railroad corporations and public utilities subject to the jurisdiction of the public service commission.

Source.

1915, 82:2. PL 227:18. RL 276:18.

References in text.

The reference to the public service commission at the end of the section is obsolete. 1951, 203 renamed the commission as the public utilities commission. See RSA 363.

Assessments Upon Shares**296:19. Levying.**

A corporation at its first meeting, or at a meeting called for the purpose, may make assessments upon the shares of its stock, not exceeding in the whole the amount at which the shares were originally limited; or such assessments may be made by the directors of the corporation; and the sums assessed shall be paid to the treasurer, within the times limited by the corporation or by the directors.

Source.

RS 141:11. CS 149:11. GS 134:15. GL 148:15. PS 149:16. PL 227:19. RL 276:19.

NOTES TO DECISIONS

1. Bylaws
2. Amount of assessments
3. Time of assessment
4. Waiver of objections
5. Stockholders' agreements
6. Estoppel

1. Bylaws

Where a bylaw provides that "ten percent shall be payable upon subscription or the subscription shall be void," a failure of the subscriber to pay the ten percent does not preclude an assessment, such subscription not being void, but at most voidable at the election of the corporation. *Piscataqua Ferry Co. v. Jones*, 39 N.H. 491, 1859 N.H. LEXIS 65 (1859).

2. Amount of assessments

Assessments beyond the sum limited by the charter are illegal. *Great Falls & Conway Railroad v. Copp*, 38 N.H. 124, 1859 N.H. LEXIS 100 (1859).

3. Time of assessment

Where party bound himself, by contract, to pay his subscription at specified times there was no occasion for making assessments under this section, and consistent with the contract, none could be made, thus the provisions of statute for the sale of shares for nonpayment of assessments had no application. *Northwood Union Shoe Co. v. Pray*, 67 N.H. 435, 32 A. 770, 1893 N.H. LEXIS 6 (1893).

In the absence of a waiver by the shareholder, no valid assessment can be made until after all the capital stock has been subscribed. *New Hampshire Central Railroad v. Johnson*, 30 N.H. 390 (1855); *Littleton Manufacturing Co. v. Parker*, 14 N.H. 543, 1844 N.H. LEXIS 159 (1844).

4. Waiver of objections

A stockholder will be regarded as having waived the right to object that the whole number of shares was not subscribed for if he has paid for the stock to which he has subscribed. *Ossipee Hosiery & Woolen Manufacturing Co. v. Canney*, 54 N.H. 295, 1874 N.H. LEXIS 37 (1874).

5. Stockholders' agreements

This section, even if interpreted to mean that in a dividend-paying corporation no assessment for any purpose can be made on stock which has been fully paid, does not prevent the stockholders from contracting among themselves for an additional assessment which would be binding on all of them if all assent to it. *Blue Mountain Forest Association v. Borrowe*, 71 N.H. 69, 51 A. 670, 1901 N.H. LEXIS 19 (1901).

6. Estoppel

A subscriber may be estopped from denying the legality of assessments upon his shares on the ground that all the shares are not taken up. *New Hampshire Central Railroad v. Johnson*, 30 N.H. 390 (1855).

296:20. Neglect to Pay.

If an owner of shares, being present, either in person or by proxy, at the meeting when any assessment is voted, or being notified thereof by the treasurer or cashier by letter, shall neglect to pay the sum so assessed on his shares for 30 days after the time appointed for the payment thereof, the treasurer or cashier may sell at auction a sufficient number of his shares to pay all assessments then due from him, with necessary charges.

Source.

RS 141:12. CS 149:12. GS 134:16. GL 148:16. PS 149:17. PL 227:20. RL 276:20.

Cross References.

Payment of assessments required to vote on shares, see RSA 296:24.

Sale price, see RSA 296:10.

NOTES TO DECISIONS

1. Application of section
2. Action to enforce payment
3. Bylaws
4. Foreign corporations

1. Application of section

This section prescribes the mode of enforcing payment in the absence of an express promise in the articles of agreement to pay assessments. *Rockingham Building Co. v. Burlingame*, 67 N.H. 301, 31 A. 23, 1892 N.H. LEXIS 53 (1893).

Where party bound himself, by contract, to pay his subscription at specified times there was no occasion for making assessments, and consistent with the contract, none could be made, thus the provisions of this section for the sale of shares for nonpayment of assessments had no application. *Northwood Union Shoe Co. v. Pray*, 67 N.H. 435, 32 A. 770, 1893 N.H. LEXIS 6 (1893).

2. Action to enforce payment

When a subscriber for stock only agrees to take a specified number of shares, without expressly promising to pay assessments, he cannot be personally sued for refusal to pay an assessment until his shares have been sold to pay the assessment pursuant to this section. *Rockingham Building Co. v.*

Burlingame, 67 N.H. 301, 31 A. 23, 1892 N.H. LEXIS 53 (1893).

Where by the terms of the subscription a subscriber promises to pay assessments, an action therefor will lie before resort is had to a sale of the shares. *Piscataqua Ferry Co. v. Jones*, 39 N.H. 491, 1859 N.H. LEXIS 65 (1859); *New Hampshire Central Railroad v. Johnson*, 30 N.H. 390 (1855).

Where there is no other method of enforcing payment of assessments than the sale of the shares, an action to recover the amount of the assessments cannot be maintained unless there has been an express promise to pay them. *Littleton Manufacturing Co. v. Parker*, 14 N.H. 543, 1844 N.H. LEXIS 159 (1844).

3. Bylaws

Where the bylaws provide that unpaid assessments shall be a charge against the delinquent interest and expressly point out the manner in which shares shall be disposed of, no other method can be adopted for a sale of stock in the enforcement of the lien. *Blue Mountain Forest Association v. Borrowe*, 71 N.H. 69, 51 A. 670, 1901 N.H. LEXIS 19 (1901).

4. Foreign corporations

A foreign corporation seeking to enforce assessments against a New Hampshire stockholder is not restricted to the remedy afforded by New Hampshire law against delinquent stockholders. *Nashua Savings Bank v. Anglo-American Land Mortgage & Agency Co.*, 108 F. 764, 1901 U.S. App. LEXIS 3824 (1901), *aff'd*, 189 U.S. 221, 23 S. Ct. 517, 47 L. Ed. 782, 1903 U.S. LEXIS 1345 (1903) (C.C.N.H.1901).

296:21. Notice; Sale.

The treasurer or cashier shall give notice of the time and place appointed for such sale, and of the sum due on each share, by publishing such notice in some newspaper printed in the vicinity where the corporation is established; and a deed of the shares made by the treasurer or cashier, in accordance with such sale, shall entitle the purchaser to a certificate therefor.

Source.

RS 141:13. CS 149:13. GS 134:17. GL 148:17. PS 149:18. PL 227:21. RL 276:21.

Cross References.

Authorization of sale of shares for payment of assessments, see RSA 296:20.

Voting

296:22. One Vote per Share.

Every stockholder in a corporation, except those whose charters or articles of agreement otherwise provide, may give one vote at any meeting thereof for every share of stock owned by such stockholder.

Source.

1846, 321:5. CS 147:14. GS 134:18. GL 148:18. PS 149:19. 1909, 3:1. 1919, 21:1. PL 227:22. RL 276:22.

296:23. Oath.

No person claiming to be a stockholder in his own right shall vote as such until he shall make oath, if required by any stockholder at such meeting, before a justice of the peace, that he is the absolute and bona fide owner of the shares claimed by him.

Source.

RS 140:42. CS 148:53. GS 134:19. GL 148:19. PS 149:20. PL 227:23. RL 276:23.

296:24. Unpaid Assessments.

No person shall vote on any shares until all assessments which have been ordered and have become due and payable thereon have been fully paid.

Source.

1849, 860:4. CS 147:16. GS 134:23. GL 148:23. PS 149:24. PL 227:24. RL 276:24.

296:25. By Representative, etc.

A person holding stock in a corporation as executor, administrator, guardian or trustee, and a person who has pledged his stock as collateral security, may vote thereon as a stockholder, upon producing, if his right is contested, evidence of his title satisfactory to the presiding officer.

Source.

RS 146:21. CS 147:19.1856, 1839:2. GS 134:20. GL 148:20. PS 149:21. PL 227:25. RL 276:25.

296:26. Proxies.

Any person, being authorized by a writing under the hand of one or more stockholders entitled to vote at any meeting of stockholders, such writing being filed with the clerk or cashier, may vote as proxy in the right of such stockholder or stockholders.

Source.

1846, 321:5. CS 147:14. GS 134:21. GL 148:21. PS 149:22. 1901, 68:1. 1919, 20:1. PL 227:26. RL 276:26.

NOTES TO DECISIONS**Cited:**

Cited in *Bowditch v. Jackson Co.*, 76 N.H. 351, 82 A. 1014, 1912 N.H. LEXIS 50, 1174 L.R.A. (n.s.) 1917A (1912).

296:27. Limitation.

No proxy shall confer the right to vote at more than one meeting, which shall be named therein.

Source.

1849, 860:3. CS 147:15. GS 134:22. GL 148:22. PS 149:23. PL 227:27. RL 276:27.

296:28. Penalty.

If any person shall fraudulently vote upon any share of which he is not the bona fide and absolute owner, except in the cases before provided for, or shall fraudulently procure or receive the transfer of a share for the purpose of voting thereon, he shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source.

RS 146:21. CS 147:19. GS 134:25. GL 148:25. PS 149:26. PL 227:29. 1931, 86:2. RL 276:28. RSA 296:28. 1973, 528:190, eff. at 11:59 p.m., Oct. 31, 1973.

Amendments

—1973. Substituted "guilty of a misdemeanor if a natural person, or guilty of a felony if any other person" for "fined not more than five hundred dollars, or imprisoned not more than one year, or both" following "shall be" at the end of the section.

Cross References.

Voting upon stock by executors, administrators, guardians and trustees, see RSA 296:25.

Voting upon stock by holders of proxies, see RSA 296:26.

Individual Liability of Stockholders and Officers**296:29. Inclusions.**

The officers and stockholders of corporations whose object is a dividend of profits, except banks, building and loan associations, and corporations organized under or adopting the provisions of RSA 294, shall be individually liable for the debts and contracts of the corporation, in the cases and to the extent specified in this chapter, and not otherwise.

Source.

1846, 321:2. CS 147:1. GS 135:1. GL 149:1. PS 150:1. PL 228:1. RL 277:1.

References in text.

The reference to RSA 294 in this section is obsolete. RSA 294, relative to business corporations, was repealed by 1981, 557:2, effective February 1, 1982. RSA 293-A, which deals with the subject matter formerly covered by RSA 294, was enacted by 1981, 557:1, effective February 1, 1982, and repealed and reenacted by 1992, 255:1, effective January 1, 1993.

NOTES TO DECISIONS

1. Purpose
2. Nonprofit corporations
3. Ultra vires debts
4. Time of liability
5. Assessment
6. Apportionment
7. Insolvent stockholders
8. Creditors' rights
9. Parties

1. Purpose

The effect of this statute is to make stockholders liable for the debts of the corporation as though they were partners. *Erickson, Livermore & Co. v. Nesmith*, 46 N.H. 371, 1866 N.H. LEXIS 38 (1866).

2. Nonprofit corporations

This section does not apply in the case of a corporation whose object is the promotion of social recreation and amusement and not a dividend of profits; and the fact that such corporation has obtained funds for the discharge of its liabilities by the sale of stock to some of its members and has paid out of the money received for dues dividends equal to the legal rate of interest upon the par value of such shares does not conclusively establish that its object is a dividend of profits. *Coulombe v. Eastman*, 76 N.H. 248, 81 A. 704, 1911 N.H. LEXIS 197 (1911).

3. Ultra vires debts

In a suit against stockholders, it is immaterial whether the debt for the recovery of which the suit was brought was beyond the power of the corporation to contract, in the

absence of fraud or collusion on the part of the plaintiffs; and if the corporation received a benefit it is immaterial whether the debt was contracted by officers properly authorized or not. *Connecticut River Savings Bank v. Fiske*, 60 N.H. 363, 1880 N.H. LEXIS 159 (1880).

4. Time of liability

Stockholders are in general liable only for debts of the corporation contracted while they are stockholders. *Chesley v. Pierce*, 32 N.H. 388, 1855 N.H. LEXIS 223 (1855).

5. Assessment

Stockholders liable for debts may assess themselves to pay such debts. *Ossipee Hosiery & Woolen Manufacturing Co. v. Canney*, 54 N.H. 295, 1874 N.H. LEXIS 37 (1874).

6. Apportionment

Where a bill in equity is brought against stockholders for the purpose of charging them personally for a debt of the corporation an equitable apportionment of liability in proportion to shares held is to be made by the court between the stockholders as far as may be. *Erickson, Livermore & Co. v. Nesmith*, 46 N.H. 371, 1866 N.H. LEXIS 38 (1866).

7. Insolvent stockholders

Where certain of the stockholders are insolvent, a decree may be rendered against such as are solvent for the entire debt, each paying such proportion as his stock bears to the whole amount of stock owned by the solvent stockholders. *Erickson, Livermore & Co. v. Nesmith*, 46 N.H. 371, 1866 N.H. LEXIS 38 (1866).

8. Creditors' rights

Creditors are not bound to exhaust their remedy against sureties for the debt before calling on the stockholders. *Connecticut River Savings Bank v. Fiske*, 60 N.H. 363, 1880 N.H. LEXIS 159 (1880).

9. Parties

It is no objection to the maintenance of a suit against stockholders that the plaintiffs have commenced an action at law against the corporation for the recovery of the same debt. *Connecticut River Savings Bank v. Fiske*, 60 N.H. 363, 1880 N.H. LEXIS 159 (1880).

All persons liable to contribute should be made parties to a bill to enforce the statutory liability; but this is a rule of convenience and not of necessity, and where persons interested are insolvent or out of the jurisdiction of the court and it is so stated in the bill and admitted by the answer or proved, it is not necessary to make them parties. *Erickson, Livermore & Co. v. Nesmith*, 46 N.H. 371, 1866 N.H. LEXIS 38 (1866).

296:30. Stock not Paid in.

Every stockholder, except stockholders in railroads, and as provided in RSA 369:16, shall be liable for all debts and contracts of the corporation until the whole amount of the capital fixed and limited by the corporation, or in the event that the corporation has voted to issue stock to an amount less than the whole amount of its authorized capital, the amount which the corporation has voted to issue, shall have been paid in, and a certificate thereof has been filed and recorded as provided in RSA 296:37, and not afterward, except in the cases specified in RSA 294:104.

Source.

1846, 321:2. CS 147:1. 1856, 1852. GS 135:8. 1869, 39:1. GL 149:8. 1889, 63:1. PS 150:8. 1915, 80:1. PL 228:2. RL 277:2.

References in text.

The reference to 294:104 at the end of the section is obsolete. RSA 294:104 was repealed by 1981, 557:2, effective

February 1, 1982. It provided that any stockholder who received a loan from the corporation, or a sum withdrawn or refunded from capital stock, or who knowingly accepted or received a dividend when the property of the corporation was insufficient or would be thereby rendered insufficient for payment of all its debts, would be liable for debts of the corporation then existing or afterward contracted, until the debts were paid.

Cross References.

Liability of stockholders of common carriers by mail, see RSA 228:91.

NOTES TO DECISIONS

1. Unliquidated claims
2. Time of liability
3. Termination of liability
4. Stockholders in creditor corporations
5. Defenses

1. Unliquidated claims

It is not necessary that a claim against a corporation should be liquidated in order to charge stockholders under this section. *Haynes v. Brown*, 36 N.H. 545, 1858 N.H. LEXIS 119 (1858).

2. Time of liability

A stockholder is not liable for work done for the corporation after the capital was fully paid in, though in performance of a contract entered into before such payment was made. *Hub Construction Co. v. New England Breeders' Club*, 76 N.H. 289, 82 A. 164, 82 A. 165, 1912 N.H. LEXIS 38 (1912).

3. Termination of liability

Liability ceases when there is a certificate of the payment of capital recorded in the proper places, without regard to the truth of the certificate at the time it was made. *Hub Construction Co. v. New England Breeders' Club*, 76 N.H. 289, 82 A. 164, 82 A. 165, 1912 N.H. LEXIS 38 (1912).

4. Stockholders in creditor corporations

The individual liability of stockholders who have not fully paid for their shares is not defeated by the fact that one of them is a stockholder in a creditor corporation which seeks to enforce such liability. *Flather v. Economy Slugging Machine Co.*, 71 N.H. 398, 52 A. 454, 1902 N.H. LEXIS 46 (1902).

5. Defenses

The fact that the corporation has obtained money from other sources than the stockholders' subscriptions to its capital, whether by loan, gift or earnings, and has used it for the benefit of the creditors seeking to establish the stockholders' liability, furnishes no defense. *Guay v. Brotherhood Bldg. Ass'n*, 86 N.H. 344, 168 A. 900, 1933 N.H. LEXIS 60 (1933).

296:31. Payment for Stock.

No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment for any part of the capital stock.

Source.

1846, 321:2. CS 147:1. GS 135:9. GL 149:9. PS 150:9. PL 228:4. RL 277:4.

NOTES TO DECISIONS

Action on notes

The illegality of the transaction is no defense to an action on a note given to the corporation for stock. *Pine River Bank v. Hodsdon*, 46 N.H. 114, 1865 N.H. LEXIS 27 (1865).

296:32. Railroads.

Stockholders in railroads shall be liable only

to the amount of the par value of their stock therein and not otherwise.

Source.

1869, 39:1. GL 149:8. 1889, 63:1. PS 150:8. 1915, 80:1. PL 228:3. RL 277:3.

NOTES TO DECISIONS

1. Prior debts
2. Evidence

1. Prior debts

Stockholders in a railroad company are not liable for a debt of the company contracted before they became stockholders. *Chesley v. Pierce*, 32 N.H. 388, 1855 N.H. LEXIS 223 (1855).

2. Evidence

The contingent liability of a stockholder is not such as to disqualify him for interest from testifying for the corporation. *White Mountains Railroad v. Eastman*, 34 N.H. 124, 1856 N.H. LEXIS 109 (1856).

296:33. Lists of Stockholders to be Filed.

The treasurer of every railroad corporation and the clerk of every other dividend paying corporation, except banks, until its capital stock is fully paid in and a certificate thereof filed and recorded, shall annually, on or before March first, cause to be filed and recorded, in the office of the clerk of the town or city in which the corporation has its principal place of business a list of the names and places of residence of all its stockholders certified under oath.

Source.

1846, 322:1. CS 147:8. 1860, 2353:4. GS 135:16. GL 149:16. PS 150:10. 1911, 159:1. PL 228:5. RL 277:5.

296:34. Penalty, Neglect.

If any such treasurer or clerk shall neglect to make such return he shall be guilty of a violation.

Source.

1846, 322:4. CS 147:11. 1860, 2353:4. GS 135:18. GL 149:18. PS 150:12. 1911, 159:1. PL 228:6. RL 177:6. RSA 296:34. 1973, 531:99, eff. at 11:59 p.m., Oct. 31, 1973.

Amendments

—1973. Substituted “be guilty of a violation” for “for each neglect be fined fifty dollars” following “he shall” at the end of the section.

Cross References.

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

296:35. Penalty, Wilful Fault.

If any treasurer or clerk of the corporation shall wilfully omit or refuse to return the list, or to deliver to any stockholder such certificate, with intent to delay or defraud any stockholder or creditor of the corporation, he shall be guilty of a class B felony.

Source.

1846, 322:5. CS 147:12. 1860, 2353:4. GS 135:19. GL 149:19.

PS 150:13. PL 228:8. RL 277:8. RSA 296:35. 1973, 528:191, eff. at 11:59 p.m., Oct. 31, 1973.

Amendments

—1973. Substituted “guilty of a class B felony” for “fined not more than five thousand dollars, or imprisoned not more than three years, or both” following “shall be” at the end of the section.

Cross References.

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

296:36. Effect of Return.

Any person whose name shall be returned on the list shall be deemed a stockholder in the corporation until he shall cause to be filed and recorded by the town clerk a certificate of the transfer of all his stock, the time of such transfer and the names and places of residence of the persons to whom he sold, signed by the treasurer or clerk of the corporation, which certificate shall be made and delivered to him by such treasurer or clerk upon request, at any time after the transfers are delivered to him for record.

Source.

1846, 322:2. CS 147:9. 1860, 2353:4. GS 135:17. GL 149:17. PS 150:11. PL 228:7. RL 277:7.

Cross References.

Filing and recordation of list of names and addresses of stockholders, see RSA 296:33.

296:37. Certificate That Stock is Fully Paid.

The directors and treasurer of every corporation, whose object is a dividend of profits, within 30 days after the whole amount of the capital stock fixed and limited by the corporation shall have been paid in, shall make and subscribe a certificate, under oath, of that fact and cause it to be recorded in the office of the clerk of the city or town where the corporation has its principal place of business.

Source.

RS 141:15-17. CS 149:15-17. GS 135:20. GL 149:20. PS 150:14. PL 228:9. RL 277:9.

296:38. Liability for Failure to File.

If they neglect so to do they shall be liable for all the debts of the corporation contracted after the expiration of said 30 days and before such certificate shall be so made and recorded.

Source.

RS 141:15-17. CS 149:15-17. GS 135:20. GL 149:20. PS 150:14. PL 228:10. RL 277:10.

NOTES TO DECISIONS

Election of remedies

A creditor seeking to enforce the individual liability of an officer may employ any suitable form of action, either legal or equitable. *Coulombe v. Eastman*, 75 N.H. 531, 77 A. 936, 1910 N.H. LEXIS 40 (1910).

296:39. Place of Filing.

If any such corporation has no place of business in this state all certificates and other papers required by law to be filed or recorded in the town clerk's office shall be so filed or recorded in the office of the secretary of state.

Source.
CS 147:13. GS 135:10. GL 149:10. 1889, 14:1. PS 150:15. PL 228:11. RL 277:11.

296:40. False Certificates, etc.

If any certificate, return or notice made or given in pursuance of the provisions of this subdivision shall be false in any material representation, all the officers who signed the same, knowing it to be so or without due inquiry, shall be individually liable for all the debts of the corporation contracted while they were in office.

Source.
1846, 321:1. CS 147:1, 7. GS 135:14. GL 149:14. PS 150:19. PL 228:12. RL 277:12.

296:41. Executors, etc.

No person holding stock as executor, administrator, guardian or trustee, and no person holding stock as collateral security, shall be thereby personally subject to any liabilities as a stockholder; but the person pledging the stock shall be so liable, and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable to the same extent as a holder thereof in his own right would be liable.

Source.
RS 146:22. CS 147:2. GS 135:13. GL 149:13. PS 150:20. PL 228:13. RL 277:13.

296:42. Contribution.

Any stockholder who has voluntarily paid a debt or liability of a corporation, after demand for payment thereof, which he was legally holden to pay, may have contribution by a bill in equity against the other stockholders for such sum as he ought equitably to recover; but no director, officer or stockholder who advised or consented to any act in violation of the provisions of this subdivision shall recover against any stockholder who did not advise or consent thereto.

Source.
RS 146:5.1843, 37:4. CS 147:6. 1857, 1962. GS 135:15. GL 149:15. PS 150:21. PL 228:14. RL 277:14.

NOTES TO DECISIONS

1. Illegal debts

2. Factors considered
1. Illegal debts
- Under this section, no stockholder who consented to the creation of an illegal debt can recover against stockholders

who did not consent. Connecticut River Savings Bank v. Fiske, 62 N.H. 178, 1882 N.H. LEXIS 37 (1882).

2. Factors considered
- In enforcing contribution, the court must take into consideration the amount of stock held by each stockholder and the fact that stockholders not within the jurisdiction cannot be made parties. Erickson, Livermore & Co. v. Nesmith, 46 N.H. 371, 1866 N.H. LEXIS 38 (1866).

296:43. Recovery From Corporation.

Any officer of a corporation, who shall have paid a debt or liability of the corporation for which he is made liable by the provisions of this subdivision, may recover the amount so paid in a bill against the corporation; but he shall have no claim against the stockholders individually therefor.

Source.
RS 141:30. CS 149:30. GS 135:21. GL 149:21. PS 150:22. PL 228:15. RL 277:15.

NOTES TO DECISIONS

- Illegal debts
- A director acquires no claim under this section by paying a judgment rendered against him as indorser of a corporate note illegally issued with his consent. Connecticut River Savings Bank v. Fiske, 62 N.H. 178, 1882 N.H. LEXIS 37 (1882).

CHAPTER 299

CORPORATE MORTGAGES AND REORGANIZATION AFTER FORECLOSURE

Mortgages	
Section	
299:1.	Franchises.
299:2.	After-acquired Property.
299:3.	Effect.
Reorganization of Corporations After Foreclosure	
299:4.	Foreclosure Sales; Franchises.
299:5.	Conveyance by Trustee.
299:6.	First Meeting.
299:7.	Powers.

Cross References.
Chattel mortgages, see RSA 360.
Mortgages of realty, see RSA 479.
Secured transactions generally, see RSA 382-A:9-101 et seq.

Mortgages

299:1. Franchises.

A corporation which may lawfully mortgage its property may also include its franchises in such mortgage.

Source.
1905, 61:1. PL 230:1. RL 279:1.

299:2. After-acquired Property.

Except as otherwise provided, corporate mort-

gage security for bonded or other indebtedness may include after-acquired property of the following classes: Real estate, franchises, fixtures, machinery and rolling stock.

Source.
1901, 66:1.1905, 111:1. PL 230:2. RSA 299:2.1959, 247:2, eff. July 1, 1961.

Amendments
—1959. Deleted “only” following “classes”.

Cross References.
After-acquired property under security agreements generally, see RSA 382-A:9-204.

NOTES TO DECISIONS

- 1. Unauthorized mortgages
- 2. Mortgagors in possession

1. Unauthorized mortgages
If a mortgage of after-acquired property is not authorized by this section, it may be a valid contract for a common-law pawn and good between the parties.Commonwealth Trust Co. v. Salem Light, Heat & Power Co., 77 N.H. 146, 89 A. 452, 1914 N.H. LEXIS 1 (1914).

2. Mortgagors in possession
The rule that a mortgage of personal property is invalid as to subsequent attaching creditors where the mortgagor is permitted to retain possession and use or dispose of the property for his own benefit without accounting to the mortgagee for the proceeds, applies to after-acquired property mortgaged by a corporation under this section.Locke v. New England Brick Co., 73 N.H. 492, 63 A. 178, 1906 N.H. LEXIS 9 (1906).

299:3. Effect.
Such mortgage of after-acquired property shall not affect any builders’ or other lien.

Source.
1901, 66:1.1905, 111:1. PL 230:3. RL 279:3.

Reorganization of Corporations After Foreclosure

299:4. Foreclosure Sales; Franchises.
The foreclosure of a mortgage of any corporation organized under the laws of this state shall inure to the benefit of the holders of bonds, coupons and other claims secured thereby, and whenever the franchises of the corporation are included in the mortgage with power of sale and foreclosure is made by decree of court, and the property, rights and franchises are sold thereunder, the purchasers of the property, rights and franchises of such corporation, their successors and assigns, shall be a corporation as of the date of foreclosure for all purposes, and they are vested with all the rights, powers, privileges, duties and liabilities of the original corporation under its charter or the general law.

Source.
1895, 52:1. PL 230:4. RL 279:4. 1998, 257:3, eff. June 30, 1998.

299:5. Conveyance by Trustee.

The trustee under such mortgage may, by auction sale, convey to said purchaser or to said new corporation all the right, title and interest under the mortgage and by virtue of the foreclosure thereof, and thereupon said trustees shall be discharged.

Source.
1895, 52:1. PL 230:5. RL 279:5.

299:6. First Meeting.

The new corporation may call its first meeting in the manner provided for calling the first meeting of the original corporation, or any such purchaser may call the same by publication in some newspaper published in the city of Concord.

Source.
1895, 52:2. PL 230:6. RL 279:6.

299:7. Powers.

It may use the old corporate name, or adopt a new one, by which it shall thereafter be known; may issue capital stock, as the directors may determine, in an amount not exceeding the purchase price at the foreclosure sale; shall file a certificate with the secretary of state, signed by its treasurer and a majority of its directors, setting forth the sale under foreclosure proceedings, the amount of capital as fixed at the first meeting and the corporate name adopted.

Source.
1895, 52:2. PL 230:7. RL 279:7.

CHAPTER 302

REGISTRATION OF INSIGNIA

Section	
302:1.	Definitions.
302:2.	Registration of Insignia.
302:3.	Application.
302:4.	Record.
302:5.	Prohibited Registration.
302:6.	Certificate.
302:7.	Penalty.
302:8.	Fees.

Cross References.
Trademarks, see RSA 350-A.

302:1. Definitions.

The term association as used in this chapter shall include any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans’ organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, whether incorporated or unincorporated, the principles

and activities of which are not repugnant to the constitution and laws of the United States or this state. The term insignia as used herein shall include a name, badge, motto, button, decoration, charm, emblem, rosette, or other insignia.

Source.

1929, 110:1. RL 185:1.

302:2. Registration of Insignia.

Any association may register, in the office of the secretary of state, a facsimile or description of its insignia and may, by reregistration, alter or cancel the same.

Source.

1929, 110:2. RL 185:2.

302:3. Application.

Application for such registration or reregistration shall be made by the chief officer or officers of said association upon blanks to be provided by the secretary of state and such registration shall be for the use, benefit, and on behalf of all degrees, branches, subordinate lodges and auxiliaries of said association and the individual members thereof throughout the state. In case of registration or reregistration of a facsimile, 2 copies of the same shall accompany the application.

Source.

1929, 110:3. RL 185:3.

302:4. Record.

The secretary of state shall keep a properly indexed record of the registrations provided for herein which record shall also show any altered or canceled registration.

Source.

1929, 110:4. RL 185:4.

302:5. Prohibited Registration.

No registration shall be granted or alteration

permitted to any association having an insignia similar to, imitating, or so nearly resembling as to be calculated to deceive, any other insignia already registered under the provisions hereof.

Source.

1929, 110:5. RL 185:5.

302:6. Certificate.

Upon the registration as herein provided the secretary of state shall issue to the petitioners a certificate evidencing such registration.

Source.

1929, 110:6. RL 185:6.

302:7. Penalty.

Any person who shall wilfully wear, exhibit, display, print, or use, for any purpose, the insignia of any such association duly registered hereunder unless he shall be entitled to wear and use the same under the constitution and by-laws, rules, and regulations of such association, shall be guilty of a misdemeanor.

Source.

1929, 110:7. RL 185:7. RSA 302:7. 1973, 528:193, eff. at 11:59 p.m., Oct. 31, 1973.

Amendments

—1973. Substituted “guilty of a misdemeanor” for “fined not exceeding one hundred dollars and, in default of payment, imprisoned not exceeding sixty days” following “shall be” at the end of the section.

Cross References.

Classification of crimes, see RSA 625:9.

Sentences, see RSA 651.

302:8. Fees.

The fee for each registration or reregistration provided for herein shall be \$1.

Source.

1929, 110:8. RL 185:8.

TITLE XXVIII

PARTNERSHIPS

CHAPTER 304-A

UNIFORM PARTNERSHIP ACT

Preliminary Provisions

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304-A:3.	Interpretation of Knowledge and Notice.
304-A:4.	Rules of Construction.
304-A:5.	Rules for Cases not Provided for in this Chapter.

Nature of a Partnership

304-A:6.	Partnership Defined.
304-A:7.	Rules for Determining the Existence of a Partnership.
304-A:8.	Partnership Property.

Relation of Partners to Persons Dealing With the Partnership

304-A:9.	Partner Agent of Partnership as to Partnership Business.
304-A:10.	Conveyance of Real Property of the Partnership.
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Registered Limited Liability Partnerships

304-A:44.	Registered Limited Liability Partnerships.
304-A:45.	Name of Registered Limited Liability Partnership.
304-A:46.	Reservation of Name.
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304-A:56.	Conversion of Partnership to Limited Partnership or Limited Liability Company.
304-A:57.	Conversion of Limited Partnership or Limited Liability Company to Partnership.
304-A:58.	Effect of Conversion; Entity Unchanged.
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304-A:60.	Effect of Merger.
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304-A:62.	Nonexclusive.

Cross References.

Appointment of auditors in actions between partners, see RSA 519:2.
Business corporations generally, see RSA 293-A.
Business profits tax generally, see RSA 77-A.
Insolvency proceedings involving partnerships, see RSA 568:46-48.
Professional corporations, see RSA 294-A.
Registration of foreign partnerships, see RSA 305-A.
Registration of partnership trade names, see RSA 349.
Service of writs in actions against partnerships, see RSA 510:13.
Set off of mutual debts or demands, see RSA 515:7.
Taxation of business profits of partnership, see RSA 77-A:2, 4.
Taxation of income of partnerships generally, see RSA 77:3, 4.
Trustee process against partnerships, see RSA 512:7, 14.
Voluntary corporations and associations generally, see RSA 292.

NOTES TO DECISIONS

Construction with other laws

The rights of judgment creditors of limited partners are not limited to those set forth in RSA chapter 304-B, and, therefore, it is not error for a trial court to import the remedial provisions of this chapter into RSA chapter 304-B. *Baybank v. Catamount Constr., Inc.*, 141 N.H. 780, 693 A.2d 1163, 1997 N.H. LEXIS 37 (1997).

Cited:

Cited in *Bayer v. Bayer*, 123 N.H. 780, 465 A.2d 900, 1983 N.H. LEXIS 350, 44 A.L.R.4th 669 (1983); *Aranson v. Schroeder*, 140 N.H. 359, 671 A.2d 1023, 1995 N.H. LEXIS 157 (1995).

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article, "Assisting Clients in Choosing the Legal Form of Their Business: A Three-Step Method," see 33 N.H.B.J. 321 (1992).

ALR.

Tort action for personal injury or property damage by partner against another partner or the partnership. 39 A.L.R.4th 139.

Preliminary Provisions**304-A:1. Name of Chapter.**

This chapter may be cited as Uniform Partnership Act.

Source.

1973, 378:1, eff. Aug. 29, 1973.

304-A:2. Definition of Terms.

In this chapter:

I. "Court" includes every court and judge having jurisdiction in the case.

II. "Business" includes every trade, occupation, or profession.

III. "Person" includes individuals, partnerships, corporations and other associations.

IV. "Bankruptcy" includes bankrupt under the federal Bankruptcy Act or insolvent under any state insolvent act.

V. "Conveyance" includes every assignment, lease, mortgage, or encumbrance.

VI. "Real property" includes land and any interest or estate in land.

VII. "Registered limited liability partnership" includes a partnership formed pursuant to an agreement governed by the laws of this state, registered under RSA 304-A:44 and complying with RSA 304-A:45.

VIII. "Foreign registered limited liability partnership" means a limited liability partnership formed pursuant to an agreement governed by the laws of another jurisdiction and registered under the laws of such jurisdiction.

IX. "Professional service" means any service which may lawfully be rendered only by certified public accountants, public accountants, architects, attorneys, podiatrists, chiropractors, dentists, pharmacists, professional engineers, land surveyors, registered professional nurses, optometrists, physicians and surgeons, physician assistants, psychologists, and veterinarians licensed, registered, certified, or otherwise authorized under the provisions of RSA 309-B, 310-A, 311, 315, 316-A, 317-A, 318, 326-B, 327, 328-D, 329, 330-A, or 332-B.

Source.

1973, 378:1, eff. Aug. 29, 1973. 1996, 212:3, eff. Aug. 9, 1996.

References in text.

The federal Bankruptcy Act, referred to in par. IV, is classified to 11 U.S.C.S. § 101 et seq.

Amendments

—1996. Paragraphs VII-IX: Added.

304-A:3. Interpretation of Knowledge and Notice.

I. A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

II. A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

Source.

1973, 378:1, eff. Aug. 29, 1973.

304-A:4. Rules of Construction.

I. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

II. The law of estoppel shall apply under this chapter.

III. The law of agency shall apply under this chapter.

IV. This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

V. This chapter shall not be construed so as to impair the obligations of any contract existing when the chapter goes into effect, nor to affect any action or proceeding begun or right accrued before this chapter takes effect.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Rules for cases not provided for in chapter, see RSA 304-A:5.

NOTES TO DECISIONS**Cited:**

Cited in *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985).

304-A:5. Rules for Cases not Provided for in this Chapter.

In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Rules of construction generally, see RSA 304-A:4.

Nature of a Partnership

Cross References.

Dissolution of partnerships, see RSA 304-A:29 et seq.
 Property rights of partners, see RSA 304-A:24 et seq.
 Relations of partners to one another generally, see RSA 304-A:18 et seq.

304-A:6. Partnership Defined.

I. A partnership is an association of 2 or more persons to carry on as co-owners a business for profit and includes, for all purposes of the laws of this state, a registered limited liability partnership.

II. But any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this chapter, unless such association would have been a partnership in this state prior to the adoption of this chapter; but this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.

Source.

1973, 378:1, eff. Aug. 29, 1973. 1996, 212:4, eff. Aug. 9, 1996.

Amendments

—1996. Paragraph I: Added “and includes, for all purposes of the laws of this state, a registered limited liability partnership” following “profit”.

NOTES TO DECISIONS

Generally

Conduct of parties and circumstances surrounding their relationship and transactions control factual question of whether a partnership existed, in cases where parties have not documented their intentions in a written agreement. *Hilco Property Servs. v. United States*, 929 F. Supp. 526, 1996 U.S. Dist. LEXIS 12085 (D.N.H. 1996).

Cited:

Cited in *Burns v. Sosman*, 114 N.H. 747, 328 A.2d 780, 1974 N.H. LEXIS 365 (1974); *Higgins v. Higgins*, 125 N.H. 806, 486 A.2d 294, 1984 N.H. LEXIS 321 (1984); *Swieczynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985); *Coe v. Watson*, 126 N.H. 456, 493 A.2d 490, 1985 N.H. LEXIS 303 (1985); *State v. Settle*, 129 N.H. 171, 523 A.2d 124, 1987 N.H. LEXIS 159 (1987); *Knox Leasing v. Turner*, 132 N.H. 68, 562 A.2d 168, 1989 N.H. LEXIS 74 (1989); *Stone and Michaud Insurance, Inc. v. Bank Five for Savings*, 785 F. Supp. 1065, 1992 U.S. Dist. LEXIS 2686 (D.N.H. 1992); *Baybank v. Catamount Constr., Inc.*, 141 N.H. 780, 693 A.2d 1163, 1997 N.H. LEXIS 37 (1997).

304-A:7. Rules for Determining the Existence of a Partnership.

In determining whether a partnership exists, these rules shall apply:

I. Except as provided by RSA 304-A:16, persons who are not partners as to each other are not partners as to third persons.

II. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

III. The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

IV. The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise.

(b) As wages of an employee or rent to a landlord.

(c) As an annuity to a widow or representative of a deceased partner.

(d) As interest on a loan, though the amount of payment vary with the profits of the business.

(e) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

Source.

1973, 378:1, eff. Aug. 29, 1973.

NOTES TO DECISIONS

Cited:

Cited in *Higgins v. Higgins*, 125 N.H. 806, 486 A.2d 294, 1984 N.H. LEXIS 321 (1984); *Ives v. Manchester Subaru, Inc.*, 126 N.H. 796, 498 A.2d 297, 1985 N.H. LEXIS 411 (1985); *State v. Settle*, 129 N.H. 171, 523 A.2d 124, 1987 N.H. LEXIS 159 (1987); *Stone and Michaud Insurance, Inc. v. Bank Five for Savings*, 785 F. Supp. 1065, 1992 U.S. Dist. LEXIS 2686 (D.N.H. 1992).

304-A:8. Partnership Property.

I. All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

II. Unless the contrary intention appears, property acquired with partnership funds is partnership property.

III. Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

IV. A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

V. All estates in real property acquired by a partnership and standing in the partnership name as of August 29, 1973, shall be valid without further act by the partnership or any of its members.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Revision note.

In par. V, deleted “heretofore” following “estates in real property” and substituted “August 29, 1973” for “the passage of this chapter” for purposes of clarity.

NOTES TO DECISIONS

1. Basis for action—Generally

2. —Accountings
3. —Pre-partnership agreement
4. Pleading

1. Basis for action—Generally

An action under former partners statute, RSA 507:1, would lie only where a particular part of the partnership property had been severed from the rest. *Stone v. Aldrich*, 43 N.H. 52, 1861 N.H. LEXIS 10 (1861).

In order to bring a case within former partners statute, RSA 507:1, there must have been a refusal to account for some specific property belonging to the partnership, and the action would not lie for a balance of unsettled partnership dealings. *Perley v. Brown*, 12 N.H. 493, 1842 N.H. LEXIS 51 (1842).

2. —Accountings

An action would lie under former partners statute, RSA 507:1, by one partner against another to recover an amount found due on an accounting between them, which the defendant had promised to pay. *Nims v. Bigelow*, 44 N.H. 376, 1862 N.H. LEXIS 176 (1862).

An action could not be brought under former partners statute, RSA 507:1, for neglect by one co-partner on demand to pay over or account for another partner's share of certain specified sums received on partnership account in the usual course of the partnership business. *Towle v. Meserve*, 38 N.H. 9, 1859 N.H. LEXIS 80 (1859).

3. —Pre-partnership agreement

An action could be maintained under former partners statute, RSA 507:1, by one partner against another upon an express promise made before the commencement of the partnership in respect to advances to be made or a common stock to be created or a certain sum of money or amount of property agreed to be furnished by each in it. *Currier v. Webster*, 45 N.H. 226, 1864 N.H. LEXIS 13 (1864).

4. Pleading

The declaration in an action under former partners statute, RSA 507:1, was required to specially set forth the property which had been received by the defendant, together with the demand and refusal to account. *Wright v. Cobleigh*, 21 N.H. 339, 1850 N.H. LEXIS 55 (1850).

RESEARCH REFERENCES

ALR.

Civil liability of one partner to another or to the partnership based on partner's personal purchase of partnership property during existence of partnership. 37 A.L.R.4th 494.

Relation of Partners to Persons Dealing With the Partnership

Cross References.

Dissolution of partnerships, see RSA 304-A:29 et seq.

Relations of partners to one another, see RSA 304-A:18 et seq.

304-A:9. Partner Agent of Partnership as to Partnership Business.

I. Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member, binds the partnership unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

II. An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

III. Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) Dispose of the goodwill of the business,

(c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability to arbitration or reference.

IV. No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Effect of dissolution on authority of partner, see RSA 304-A:33.

Effect of dissolution on power of partner to bind partnership to third persons, see RSA 304-A:35.

Partners by estoppel, see RSA 304-A:16.

NOTES TO DECISIONS

Cited:

Cited in *Shortlidge v. Gutoski*, 125 N.H. 510, 484 A.2d 1083, 1984 N.H. LEXIS 404 (1984); *Keshishian v. CMC Radiologists*, 142 N.H. 168, 698 A.2d 1228, 1997 N.H. LEXIS 72 (1997); *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

304-A:10. Conveyance of Real Property of the Partnership.

I. Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under RSA 304-A:9, I or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

II. Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under RSA 304-A:9, I.

III. Where title to real property is in the name of one or more but not all the partners,

and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partner's act does not bind the partnership under RSA 304-A:9, I, unless the purchaser or his assignee is a holder for value without knowledge.

IV. Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under RSA 304-A:9, I.

V. Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property.

VI. All conveyances of real property of any partnership made prior to August 29, 1973, by the partnership in the partnership name shall be valid without further act by the partnership or any of its members.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Revision note.

In par. VI, deleted "heretofore" preceding "made" and inserted "prior to August 29, 1973" thereafter for purposes of clarity.

NOTES TO DECISIONS

Cited:

Cited in *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985).

304-A:11. Partnership Bound by Admission of Partner.

An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership.

Source.

1973, 378:1, eff. Aug. 29, 1973.

NOTES TO DECISIONS

Cited:

Cited in *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985); *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

304-A:12. Partnership Charged with Knowledge of or Notice to Partner.

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner

who reasonably could and should have communicated it to the acting partner, operates as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Construction of "knowledge" and "notice" generally, see RSA 304-A:3.

NOTES TO DECISIONS

Cited:

Cited in *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985); *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

304-A:13. Partnership Bound by Partner's Wrongful Act.

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Binding effect of partners acts generally, see RSA 304-A:9.

NOTES TO DECISIONS

Suits against partnerships

A partnership has no identity as a separate entity subject to suit under the New Hampshire version of the Uniform Partnership Act. *Zee-Bar, Inc. v. Kaplan*, 792 F. Supp. 895, 1992 U.S. Dist. LEXIS 7004 (D.N.H. 1992).

304-A:14. Partnership Bound by Partner's Breach of Trust.

The partnership is bound to make good the loss:

I. Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

II. Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

Source.

1973, 378:1, eff. Aug. 29, 1973.

304-A:15. Nature of Partner's Liability.

I. Except as provided in paragraph II, all partners are liable:

(a) Jointly and severally for everything chargeable to the partnership under RSA 304-A:13 and RSA 304-A:14.

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

II. Subject to paragraph III, a partner in a registered limited liability partnership is not liable directly or indirectly (including by way of indemnification, contribution, assessment or otherwise) for debts, obligations and liabilities of or chargeable to the partnership, whether in tort, contract, or otherwise, arising from omissions, negligence, wrongful acts, misconduct or malpractice committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or an employee, agent, or representative of the partnership.

III. Paragraph II shall not affect the liability of a partner in a registered limited liability partnership for the partner's own omissions, negligence, wrongful acts, misconduct or malpractice, or that of any person under the partner's direct supervision and control.

IV. A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover damages or enforce the obligations arising out of the omissions, negligence, wrongful acts, misconduct or malpractice of the type described in paragraph II, unless such partner is personally liable under paragraph III.

Source.

1973, 378:1, eff. Aug. 29, 1973. 1996, 212:5, eff. Aug. 9, 1996.

Amendments

—1996. Designated the existing provisions of the section as par. I, added "Except as provided in paragraph II" preceding "all partners" in the introductory language of that paragraph, and added pars. II-IV.

Cross References.

Effect of dissolution on partner's existing liability, see RSA 304-A:36.

Liability of partner for obligations arising prior to admission to partnership, see RSA 304-A:17.

NOTES TO DECISIONS

1. Claims for compensation
2. Joint liability

1. Claims for compensation

Partners are personally liable for partnership obligations, including an employee's claim for compensation. *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985).

2. Joint liability

Where a partner's liability for the debts and obligations of the partnership is joint, an adjudication of liability is required against each partner, and a judgment against the partnership will not support an execution against the individual property of general partners in respect to whom the trial court has not yet entered judgment. *Storch Engineers v. D & K Land Developers*, 134 N.H. 414, 593 A.2d 245, 1991 N.H. LEXIS 79 (1991).

Cited:

Cited in *Shortlidge v. Gutoski*, 125 N.H. 510, 484 A.2d 1083, 1984 N.H. LEXIS 404 (1984).

304-A:16. Partner by Estoppel.

I. When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made:

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

II. When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

Source.

1973, 378:1, eff. Aug. 29, 1973.

NOTES TO DECISIONS

Application

Partnership by estoppel was created where individuals represented themselves, or allowed themselves to be represented by others, as partners to third parties, and these representations were designed to induce reliance by third parties and, in fact, did cause third parties to change position. *Hilco Property Servs. v. United States*, 929 F. Supp. 526, 1996 U.S. Dist. LEXIS 12085 (D.N.H. 1996).

304-A:17. Liability of Incoming Partner.

A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Liability of partners generally, see RSA 304-A:15.

Partner's interest subject to charging order, see RSA 304-A:28.

Relations of Partners to One Another

Cross References.

Dissolution of partnership, see RSA 304-A:29 et seq.

Nature of partnership generally, see RSA 304-A:6 et seq.

304-A:18. Rules Determining Rights and Duties of Partners.

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

I. Each partner shall be repaid such partner's contributions, whether by way of capital or advances, to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied and, except as provided in RSA 304-A:15, II, each partner must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to such partner's share in the profits.

II. The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

III. A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

IV. A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

V. All partners have equal rights in the management and conduct of the partnership business.

VI. No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

VII. No person can become a member of a partnership without the consent of all the partners.

VIII. Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

Source.

1973, 378:1, eff. Aug. 29, 1973. 1996, 212:6, eff. Aug. 9, 1996.

Amendments

—1996. Paragraph I: Substituted "such partner's" for "his" in two places and inserted "except as provided in RSA 304-A:15, II, each partner" preceding "must contribute".

Cross References.

Property rights of partners generally, see RSA 304-A:24 et seq.

Rights of partners to application of property upon dissolution, see RSA 304-A:38—40.

NOTES TO DECISIONS

1. Construction generally
2. Construction with other laws

1. Construction generally

Unless the partnership agreement provides otherwise, partners by law have equal rights in the management and conduct of the partnership business, and each partner therefore has an equal right to control the work performance of a partnership employee. *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985).

2. Construction with other laws

A partner retaining his statutory right of management is in an employment relationship with a partnership employee and, thus, constitutes an employer under RSA 281:2, I (former Worker's Compensation Law). *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985).

Cited:

Cited in *Coe v. Watson*, 126 N.H. 456, 493 A.2d 490, 1985 N.H. LEXIS 303 (1985); *Ives v. Manchester Subaru, Inc.*, 126 N.H. 796, 498 A.2d 297, 1985 N.H. LEXIS 411 (1985); *Royal Oak Realty Trust v. Mordita Realty Trust*, 146 N.H. 578, 777 A.2d 860, 2001 N.H. LEXIS 113 (2001).

304-A:19. Partnership Books.

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

Source.

1973, 378:1, eff. Aug. 29, 1973.

304-A:20. Duty of Partners to Render Information.

Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Accountability of partner fiduciary, see RSA 304-A:21.

304-A:21. Partner Accountable as a Fiduciary.

I. Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

II. This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

Source.

1973, 378:1, eff. Aug. 29, 1973.

NOTES TO DECISIONS

Cited:

Cited in *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

304-A:22. Right to an Account.

Any partner shall have the right to a formal account as to partnership affairs:

I. If he is wrongfully excluded from the partnership business or possession of its property by his co-partners.

II. If the right exists under the terms of any agreement.

III. As provided by RSA 304-A:21.

IV. Whenever other circumstances render it just and reasonable.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Access to partnership books generally, see RSA 304-A:19.

RESEARCH REFERENCES

ALR.

When statute of limitations commences to run on right of partnership accounting. 44 A.L.R.4th 678.

304-A:23. Continuation of Partnership Beyond Fixed Term.

I. When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

II. A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Property Rights of a Partner

Cross References.

Dissolution of partnerships generally, see RSA 304-A:29 et seq.

Relations of partners to one another generally, see RSA 304-A:18 et seq.

RESEARCH REFERENCES

ALR.

Civil liability of one partner to another or to the partnership based on partner's personal purchase of partnership property during existence of partnership. 37 A.L.R.4th 494.

304-A:24. Extent of Property Rights of a Partner.

The property rights of a partner are: his rights in specific partnership property; his interest in the partnership; and his right to participate in the management.

Source.

1973, 378:1, eff. Aug. 29, 1973.

NOTES TO DECISIONS

Cited:

Cited in *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985); *Appeal of McKerley Health Facilities*, 145 N.H. 164, 761 A.2d 413, 2000 N.H. LEXIS 37 (2000).

304-A:25. Nature of a Partner's Right in Specific Partnership Property.

I. A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

II. The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment, trustee process or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner, his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to a distributive share, or allowance to widows, heirs, or next of kin.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Assignment of partner's interest in partnership, see RSA 304-A:27.

Attachment generally, see RSA 511 and 511-A.

Homesteads generally, see RSA 480.

Partnership property generally, see RSA 304-A:8.

Trustee process generally, see RSA 512.

NOTES TO DECISIONS

1. Basis for action—Generally
2. —Accountings
3. —Pre-partnership agreement
4. Pleading

1. Basis for action—Generally

An action under former partners statute, RSA 507:1, would lie only where a particular part of the partnership property had been severed from the rest. *Stone v. Aldrich*, 43 N.H. 52, 1861 N.H. LEXIS 10 (1861).

In order to bring a case within former partners statute, RSA 507:1, there must have been a refusal to account for some specific property belonging to the partnership, and the action would not lie for a balance of unsettled partnership dealings. *Perley v. Brown*, 12 N.H. 493, 1842 N.H. LEXIS 51 (1842).

2. —Accountings

An action under former partners statute, RSA 507:1, would lie by one partner against another to recover an amount found due on an accounting between them, which the defendant had promised to pay. *Nims v. Bigelow*, 44 N.H. 376, 1862 N.H. LEXIS 176 (1862).

An action could not be brought under former partners statute, RSA 507:1, for neglect by one co-partner on demand to pay over or account for another partner's share of certain specified sums received on partnership account in the usual course of the partnership business. *Towle v. Meserve*, 38 N.H. 9, 1859 N.H. LEXIS 80 (1859).

3. —Pre-partnership agreement

An action under former partners statute, RSA 507:1, could be maintained by one partner against another upon an express promise made before the commencement of the partnership in respect to advances to be made or a common stock to be created or a certain sum of money or amount of property agreed to be furnished by each in it. *Currier v. Webster*, 45 N.H. 226, 1864 N.H. LEXIS 13 (1864).

4. Pleading

The declaration in an action under former partners statute, RSA 507:1, was required to specially set forth the property which had been received by the defendant, together with the demand and refusal to account. *Wright v. Cobleigh*, 21 N.H. 339, 1850 N.H. LEXIS 55 (1850).

Cited:

Cited in *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985); *Knox Leasing v. Turner*, 132 N.H. 68, 562 A.2d 168, 1989 N.H. LEXIS 74 (1989).

304-A:26. Nature of Partner's Interest in the Partnership.

A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

Source.

1973, 378:1, eff. Aug. 29, 1973.

NOTES TO DECISIONS**Cited:**

Cited in *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985).

304-A:27. Assignment of Partner's Interest.

I. Conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

II. In case of dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Partner's interest in partnerships generally, see RSA 304-A:26.

Right of partner to an accounting, see RSA 304-A:22.

NOTES TO DECISIONS**Cited:**

Cited in *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985); *Appeal of McKerley Health Facilities*, 145 N.H. 164, 761 A.2d 413, 2000 N.H. LEXIS 37 (2000).

304-A:28. Partner's Interest Subject to Charging Order.

I. On due application to a superior court by any judgment creditor of a partner, the court may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect to the partnership, and make all other orders, functions, accounts and inquiries which the circumstances of the case may require.

II. The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

III. Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Attachment and trustee process of partnership property, see RSA 304-A:25.

NOTES TO DECISIONS**Generally**

Creditor was not entitled to a charging order against a debtor partner's interest in a partnership because the statute authorizing such an order presupposed that a partnership existed, and further evidence was required to determine if the partnership, from which one of the two partners had withdrawn, had been terminated. *Cadle Co. v. Bourgeois*, 149 N.H. 410, 821 A.2d 1001, 2003 N.H. LEXIS 56 (2003).

RSA 304-B:41 is not inconsistent with the remedial provisions of RSA 304-A:28, since the purpose of the charging order provisions under both statutes is to balance the need to protect the orderly operation of the partnership and the rights of creditors. *Baybank v. Catamount Constr., Inc.*, 141 N.H. 780, 693 A.2d 1163, 1997 N.H. LEXIS 37 (1997).

A court may properly look to RSA 304-A:28 for the means to enforce a charging order under RSA 304-B:41 when the latter remedy alone would be insufficient. *Baybank v. Catamount Constr., Inc.*, 141 N.H. 780, 693 A.2d 1163, 1997 N.H. LEXIS 37 (1997).

Cited:

Cited in *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985).

Dissolution and Winding Up**Cross References.**

Insolvency proceedings involving partnership, see RSA 568:46-48.

Partnership property generally, see RSA 304-A:8.

Property rights of partners generally, see RSA 304-A:24 et seq.

Relations of partners to one another generally, see RSA 304-A:18 et seq.

Relations of partners to persons dealing with the partnership generally, see RSA 304-A:9 et seq.

304-A:29. Dissolution Defined.

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Right to winding up partnership, see RSA 304-A:37.

NOTES TO DECISIONS**Cited:**

Cited in *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

304-A:30. Partnership not Terminated by Dissolution.

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

Source.

1973, 378:1, eff. Aug. 29, 1973.

NOTES TO DECISIONS

1. Conducting new business
2. Termination

1. Conducting new business

During the winding up of a partnership, remaining partners may act to complete transactions already begun but not yet finished, but may not transact any new business. *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

2. Termination

Because a partnership was not necessarily terminated when it was dissolved, under RSA 304-A:30, further evidence was required to determine whether a partner's withdrawal from the partnership, which effected its dissolution, terminated the partnership. *Cadle Co. v. Bourgeois*, 149 N.H. 410, 821 A.2d 1001, 2003 N.H. LEXIS 56 (2003).

Cited:

Cited in *Swiezynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985).

304-A:31. Causes of Dissolution.

Dissolution is caused:

I. Without violation of the agreement between the partners:

(a) By the termination of the definite term or particular undertaking specified in the agreement.

(b) By the express will of any partner when no definite term or particular undertaking is specified.

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking.

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners.

II. In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time.

III. By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership.

IV. By the death of any partner.

V. By the bankruptcy of any partner or the partnership.

VI. By decree of court under RSA 304-A:32.

Source.

1973, 378:1, eff. Aug. 29, 1973.

NOTES TO DECISIONS

1. Partnership at will
2. Time of dissolution

1. Partnership at will

A partnership was at will, rather than one for a "particular undertaking," since, although the purpose of the partnership in entering into a joint venture might have been accomplished at a particular time, the purposes of development and opera-

tion would have been ongoing and could conceivably have continued indefinitely. *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

2. Time of dissolution

Partnership-at-will involving two people was not dissolved until one partner had actual notice of the other partner's withdrawal from the partnership, under RSA 304-A:31, I(b), so a partner's collateral assignment of his interest in the partnership was effective prior to such notice. *Cadle Co. v. Bourgeois*, 149 N.H. 410, 821 A.2d 1001, 2003 N.H. LEXIS 56 (2003).

A partnership did not dissolve until the withdrawing partner gave notice to all of the other partners of his withdrawal. *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

304-A:32. Dissolution by Decree of Court.

I. On application by or for a partner the court shall decree a dissolution whenever:

(a) A partner has been declared mentally incompetent in any judicial proceeding or is shown to be of unsound mind.

(b) A partner becomes in any other way incapable of performing his part of the partnership contract.

(c) A partner has been guilty of such conduct as tends to effect prejudicially the carrying on of the business.

(d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him.

(e) The business of the partnership can only be carried on at a loss.

(f) Other circumstances render a dissolution equitable.

II. The court shall decree a dissolution on the application of the purchaser of a partner's interest under RSA 304-A:27 or RSA 304-A:28:

(a) After the termination of the specified term or particular undertaking.

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Effect of dissolution generally, see RSA 304-A:30.

Effect of dissolution on authority of partner, see RSA 304-A:33.

NOTES TO DECISIONS

Petition for dissolution

A bank had no standing to seek judicial dissolution of limited partnership interests as the bank was only a creditor with a charging order on the limited partnership interests in its attempt to satisfy its judgment out of partnership assets, but was not a purchaser of the partnership interests as there was no foreclosure of the partnership interests. *Baybank v. Catamount Constr., Inc.*, 141 N.H. 780, 693 A.2d 1163, 1997 N.H. LEXIS 37 (1997).

304-A:33. General Effect of Dissolution on Authority of Partner.

Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership,

I. With respect to the partners,

(a) When the dissolution is not by the act, bankruptcy or death of a partner; or

(b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where RSA 304-A:34 so requires.

II. With respect to persons not partners, as declared in RSA 304-A:35.

Source.

1973, 378:1, eff. Aug. 29, 1973.

NOTES TO DECISIONS

Conducting new business

During the winding up of a partnership, remaining partners may act to complete transactions already begun but not yet finished, but may not transact any new business. *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

304-A:34. Right of Partner to Contribution From Co-Partners After Dissolution.

Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to the co-partners for such partner's share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

I. The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution,

II. The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy, or

III. The liability is for a debt, obligation or liability for which the partner is not liable as provided in RSA 304-A:15, II.

Source.

1973, 378:1, eff. Aug. 29, 1973. 1996, 212:7, eff. Aug. 9, 1996.

Amendments

—1996. Substituted “the” for “his” preceding “co-partners for” and “such partner’s” for “his” thereafter in the introductory paragraph, added par. III, and made minor stylistic changes throughout the section.

Cross References.

Authority of partner as agent of partnership generally, see RSA 304-A:9.

“Knowledge” and “notice” defined, see RSA 304-A:3.

304-A:35. Power of Partner to Bind Partnership to Third Persons After Dissolution.

I. After dissolution a partner can bind the

partnership except as provided in paragraph III:

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(1) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(2) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

II. The liability of a partner under paragraph I(b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) Unknown as a partner to the person with whom the contract is made; and

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

III. The partnership is in no case bound by any act of a partner after dissolution:

(a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) Where the partner has become bankrupt; or

(c) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who:

(1) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(2) Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph I(b)(2).

IV. Nothing in this section shall affect the liability under RSA 304-A:16 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Revision note.

In subpar. I(b)(2), inserted "the fact of dissolution" preceding "had not been advertised". The language appears in the

Uniform Partnership Act and was apparently omitted inadvertently.

Cross References.

Effect of dissolution upon authority of partner generally, see RSA 304-A:33.

"Knowledge" and "notice" defined, see RSA 304-A:3.

NOTES TO DECISIONS

Cited:

Cited in *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

304-A:36. Effect of Dissolution on Partner's Existing Liability.

I. The dissolution of the partnership does not of itself discharge the existing liability of any partner.

II. A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

III. Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

IV. The individual property of a deceased partner shall be liable for those obligations of the partnership incurred while the deceased partner was a partner and for which such partner was liable under RSA 304-A:15 but subject to the prior payment of such partner's separate debts.

Source.

1973, 378:1, eff. Aug. 29, 1973. 1996, 212:8, eff. Aug. 9, 1996.

Amendments

—1996. Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Liability of partners generally, see RSA 304-A:15.

Liability of persons continuing the business, see RSA 304-A:41.

Rights of estate of deceased partner where business is continued, see RSA 304-A:42.

304-A:37. Right to Wind Up.

Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.

Source.
1973, 378:1, eff. Aug. 29, 1973.

Cross References.
Accrual of right to accounting, see RSA 304-A:43.
Fiduciary duties of representatives of deceased partners engaged in liquidation of partnership, see RSA 304-A:21.
Rights of estate of deceased partner when business is continued, see RSA 304-A:42.

304-A:38. Right of Partners to Application of Partnership Property.

I. When dissolution is caused in any way, except in contravention of the partnership agreement, each partner as against his co-partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under RSA 304-A:36, II, he shall receive in cash only the net amount due him from the partnership.

II. When dissolution is caused in contravention of the partnership agreement, the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(1) All the rights specified in paragraph I of this section, and

(2) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under paragraph II of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(1) If the business is not continued under the provisions of paragraph II(b), all the rights of a partner under paragraph I, subject to paragraph II(a)(2) of this section.

(2) If the business is continued under paragraph II(b) of this section, the right as against his co-partners, and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his co-partners by the dissolution,

ascertained and paid him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the goodwill of the business shall not be considered.

Source.
1973, 378:1, eff. Aug. 29, 1973.

Cross References.
Accrual of right to accounting, see RSA 304-A:43.
Partnership property generally, see RSA 304-A:8.
Property rights of partners generally, see RSA 304-A:24 et seq.
Rights of partners generally, see RSA 304-A:18.
Rights of partners in cases involving fraud or misrepresentation, see RSA 304-A:39.
Rules of distribution of property, see RSA 304-A:40.

NOTES TO DECISIONS

Cited:
Cited in *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

304-A:39. Rights Where Partnership is Dissolved for Fraud or Misrepresentation.

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

(a) To a lien on, or right of retention of, the surplus of the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

Source.
1973, 378:1, eff. Aug. 29, 1973.

Cross References.
Liability of partnership for wrongful acts of partner generally, see RSA 304-A:13, 14.
Rights of partners to application of partnership property generally, see RSA 304-A:38.

304-A:40. Rules for Distribution.

In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

- I. The assets of the partnership are:
 - (a) The partnership property,

(b) The contributions of the partners specified in paragraph IV of this section.

II. The liabilities of the partnership shall rank in order of payment, as follows:

(a) Those owing to creditors other than partners,

(b) Those owing to partners other than for capital and profits,

(c) Those owing to partners in respect of capital,

(d) Those owing to partners in respect of profits.

III. The assets shall be applied in order of their declaration of the liabilities.

IV. Except as provided in RSA 304-A:15, II:

(a) The partners shall contribute, as provided by RSA 304-A:18, I, the amount necessary to satisfy the liabilities; and

(b) If any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

V. An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in paragraph IV of this section.

VI. Any partner or his legal representative shall have the right to enforce the contributions specified in paragraph IV of this section to the extent of the amount which he has paid in excess of his share of the liability.

VII. The individual property of a deceased partner shall be liable for the contributions specified in paragraph IV of this section.

VIII. When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

IX. Where a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:

(a) Those owing to separate creditors,

(b) Those owing to partnership creditors,

(c) Those owing to partners by way of contribution.

Source.

1973, 378:1, eff. Aug. 29, 1973. 1996, 212:9, 10, eff. Aug. 9, 1996.

Amendments

—1996. Paragraph I(b): Deleted “necessary for the payment of all the liabilities” preceding “specified in paragraph” and substituted “IV” for “II” thereafter.

Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Accrual of right to accounting, see RSA 304-A:43.

Property rights of partners generally, see RSA 304-A:24 et seq.

Rights of partners generally, see RSA 304-A:18.

NOTES TO DECISIONS

Construction

This section applies to settlement of accounts between partners upon dissolution of the partnership and does not entitle a judgment creditor of the partnership to levy execution against an individual partner against whom judgment has not been rendered. *Storch Engineers v. D & K Land Developers*, 134 N.H. 414, 593 A.2d 245, 1991 N.H. LEXIS 79 (1991).

Cited:

Cited in *Humiston v. Bushnell*, 118 N.H. 759, 394 A.2d 844, 1978 N.H. LEXIS 288 (1978); *Swieczynski v. Civiello*, 126 N.H. 142, 489 A.2d 634, 1985 N.H. LEXIS 260 (1985); *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997); *Robbins v. Salem Radiology*, 145 N.H. 415, 764 A.2d 885, 2000 N.H. LEXIS 86 (2000).

304-A:41. Liability of Persons Continuing the Business in Certain Cases.

I. When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to 2 or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

II. When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

III. When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs I and II of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

IV. When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

V. When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of RSA

304-A:38, II(b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

VI. When a partner is expelled and the remaining partners continue the business, either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

VII. The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

VIII. When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

IX. Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

X. The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Liability of incoming partners generally, see RSA 304-A:17.

Liability of partners generally, see RSA 304-A:15.

Property rights of partners generally, see RSA 304-A:24 et seq.

Rights of partners generally, see RSA 304-A:18.

Rights of retiring partners or estates of deceased partners when business is continued, see RSA 304-A:42.

304-A:42. Rights of Retiring or Estate of Deceased Partner When the Business is Continued.

When any partner retires or dies, and the business is continued under any of the conditions set forth in RSA 304-A:41, I, II, III, V, or in RSA 304-A:38, II(b) without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to

the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by RSA 304-A:41, VIII.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Fiduciary duties of deceased partners' representatives engaged in liquidation of partnership, see RSA 304-A:21.

Liability of persons continuing business generally, see RSA 304-A:41.

Rights of partners to application of partnership property generally, see RSA 304-A:38.

304-A:43. Accrual of Actions.

The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business at the date of dissolution, in the absence of any agreement to the contrary.

Source.

1973, 378:1, eff. Aug. 29, 1973.

Cross References.

Liabilities of persons continuing business generally, see RSA 304-A:41.

Rights of estate of deceased partner when business continued generally, see RSA 304-A:42.

Right to wind up partnership affairs, see RSA 304-A:37.

NOTES TO DECISIONS

Cited:

Cited in *Miami Subs Corp. v. Murray Family Trust & Kenneth Dash Partnership*, 142 N.H. 501, 703 A.2d 1366, 1997 N.H. LEXIS 126 (1997).

Registered Limited Liability Partnerships

304-A:44. Registered Limited Liability Partnerships.

I. To become a registered limited liability partnership, a partnership shall file with the secretary of state a registration stating:

- (a) The name of the partnership.
- (b) The address of its principal office.
- (c) The address of its registered office and the name and address of its registered agent for service of process in this state.
- (d) A brief statement of the business in which the partnership engages.
- (e) Any other matters that the partnership determines to include.
- (f) That the partnership hereby registers as a registered limited liability partnership.

II. The secretary of state shall register as a registered limited liability partnership any partnership that submits a completed registration with the required fee; provided the partnership name meets the requirements of RSA 304-A:45.

III. A partnership becomes a registered limited liability partnership at the close of business on the date of the filing of the initial registration with the secretary of state or at the effective time or the delayed effective time and date not later than the ninetieth day after the date the registration is filed, specified in the registration, if, in any case, there has been substantial compliance with the requirements of this chapter. A document filed electronically shall be effective at such delayed effective time and date or upon the date and time of acceptance by the secretary of state corporate database and application, if, in any case, there has been substantial compliance with the requirements of this chapter. A partnership continues as a registered limited liability partnership if there has been substantial compliance with the requirements of this chapter. The status of a partnership as a registered limited liability partnership and the liability of a partner of such registered limited liability partnership shall not be adversely affected by errors or subsequent changes in the information stated in a registration under paragraph I of this section.

IV. (a) Registration remains effective until:

(1) It is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice; or

(2) The effective cancellation date in a notice from the secretary of state that the partnership has failed for 2 consecutive years to pay the annual fee, or has failed to notify the secretary of state within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued, or is without a registered agent or registered office in this state for 60 days or more.

(b) A withdrawal notice under subparagraph (a)(1) shall contain the name of the registered limited liability partnership and the date on which it originally registered as a limited liability partnership.

V. The fact that a registration or a notice is on file with the secretary of state is notice that the partnership is a registered limited liability partnership and is notice of all other facts set forth in the registration or notice.

VI. The secretary of state shall provide forms for a registration under paragraph I of this section.

VII. A limited liability partnership withdrawn under RSA 304-A:44, IV(a)(2) may apply to the secretary of state for reinstatement by completion of a reinstatement form together with payment of any fees in arrears at the time

of withdrawal. Beyond 120 days a reinstatement must be accompanied by, in addition to the above, annual fees for the years since the withdrawal and a certificate from the New Hampshire department of revenue administration indicating there are no taxes due that department.

Source.

1996, 212:11, eff. Aug. 9, 1996. 1997, 61:1, eff. Jan. 1, 1998; 120:6, eff. Aug. 8, 1997. 2004, 248:29, eff. July 1, 2004. 2006, 316:8, eff. July 1, 2006.

Amendments

—2006. Paragraph VII: In the first sentence, substituted “reinstatement” for “reregistration” preceding “by” and substituted “completion of a reinstatement form” for “filing a new registration with the secretary of state under RSA 304-A:44” thereafter, deleted “and” and added the beginning of the second sentence preceding “for the years”.

—2004. Paragraph III: Added the second sentence.

—1997. Paragraph III: Chapter 120 substituted “close of business on the date” for “time” preceding “of the filing,” “the effective time or the delayed effective time and” for “any later” preceding “date not later” and “any” for “either” preceding “case” in the first sentence.

Paragraph IV(a)(2): Chapter 61 substituted “pay the annual fee” for “file the annual notice with the required fees” following “2 consecutive years to”.

304-A:45. Name of Registered Limited Liability Partnership.

The name of a registered limited liability partnership:

I. Shall contain the words “limited liability partnership” or the abbreviation “L.L.P.” or “LLP” as the last words or letters of its name.

II. Except as authorized by paragraphs III and IV, a registered limited liability partnership name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(c) The fictitious name of another foreign corporation authorized to transact business in this state.

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(e) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

III. A registered limited liability partnership may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused

with or mistaken for one or more of the names described in paragraph II, as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(a) The holder or holders of the name as described in paragraph II gives written consent to use the name that is not distinguishable from or likely to be confused with or mistaken for the name of the applying registered limited liability partnership; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(b) The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying registered limited liability partnership; or

(c) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

IV. A registered limited liability partnership may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user registered limited liability partnership:

(a) Has merged with the other entity;

(b) Has been formed by reorganization of the other entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other entity.

V. This chapter does not control the use of fictitious names.

VI. Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a domestic registered limited liability partnership under the same name as the trade name.

Source.

1996, 212:11, eff. Aug. 9, 1996. 2004, 248:30, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

304-A:46. Reservation of Name.

I. The exclusive right to the use of a name may be reserved by:

(a) Any person intending to register as a registered limited liability partnership under this chapter and to adopt that name;

(b) Any foreign registered limited liability partnership intending to register in New Hampshire; or

(c) Any registered limited liability partnership or any foreign registered limited liability partnership registered in New Hampshire which, in either case, proposes to change its name to that name.

II. The reservation of a specified name shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name meets the requirements of RSA 304-A:45, II and III, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be canceled by filing with the secretary of state notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee.

Source.

1996, 212:11, eff. Aug. 9, 1996.

304-A:47. Annual Fee for Secretary of State.

I. Each domestic registered limited liability partnership, and each foreign registered limited liability partnership registered under this chapter shall pay an annual fee.

II. The first annual fee shall be paid to the secretary of state between January 1 and April 1 of the year following the calendar year in which the limited liability partnership was registered; provided, however, that a limited liability partnership that has registered at any time between December 1 of the preceding year and April 1 shall not be required to pay an annual fee during that year. Subsequent annual fees shall be paid to the secretary of state between January 1 and April 1 of the following calendar years.

III. Each domestic and foreign registered limited liability partnership that fails or refuses to pay its annual fee for any year on or before April 1 shall be subject to an additional fee as set out in RSA 304-A:51, II.

Source.

1996, 212:11, eff. Aug. 9, 1996. 1997, 61:2, eff. Jan. 1, 1998. 2004, 248:64, eff. July 1, 2004.

Amendments

—2004. Paragraph III: Substituted "on or before April 1" for "by April 15".

—1997. Rewritten to the extent that a detailed comparison would be impracticable.

304-A:48. Change of Name; Change of Information.

When a registered limited liability partnership wishes to change its name or a foreign registered limited liability partnership changes its name, it shall file with the secretary of state a notice of change of name. A registered limited liability partnership or foreign registered limited liability partnership may file with the secretary of state a notice of change with respect to any other information contained in its registration. Any notice of change of name or information shall specify the name under which the registered limited liability partnership or foreign registered limited liability partnership was originally registered, the date of its original registration, and the new name or new information. The notice of a change of name of a foreign registered limited liability partnership shall be accompanied by a certificate of legal existence or good standing, authenticated within 60 days prior to the filing of the notice, issued by the proper officer of the jurisdiction in which the foreign registered limited liability partnership is registered as a domestic limited liability partnership.

Source.

1996, 212:11, eff. Aug. 9, 1996. 1997, 61:3, eff. Jan. 1, 1998.

Amendments

—1997. Deleted “or annual notice” following “original registration” at the end of the second sentence.

304-A:49. Registered Office; Registered Agent.

I. Each registered limited liability partnership and foreign registered limited liability partnership shall have and maintain in New Hampshire:

(a) A registered office that may be the same as any of its places of business; and

(b) A registered agent, which agent may be:

(1) An individual who resides in this state and whose business office is identical with the registered office; or

(2) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose business office is identical with the registered office; or

(3) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or

(4) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

II. A registered limited liability partnership or foreign registered limited liability partnership may change its registered office or registered agent, or both, by filing with the secretary of state a notice of change of name or address of

registered agent or registered office setting forth:

(a) The name of the registered limited liability partnership or foreign registered limited liability partnership.

(b) The street address of its current registered office.

(c) If the street address of its registered office is to be changed, the street address to which the registered office is to be changed.

(d) The name and address of its current registered agent.

(e) If its registered agent is to be changed, the name of its successor registered agent.

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

III. A registered agent of a registered limited liability partnership or foreign registered limited liability partnership may resign as registered agent by executing and filing a written notice of resignation with the secretary of state. The secretary of state shall mail a copy of the notice to the registered limited liability partnership or foreign registered limited liability partnership at its principal office. The appointment of the registered agent terminates on the thirty-first day after filing of the notice with the secretary of state or on the appointment of a successor registered agent, whichever occurs first. The notice of resignation may include a statement that the registered office is also discontinued.

IV. If a registered agent changes its address to another place in this state, it may change the address of the registered office of any registered limited liability partnership or foreign registered limited liability partnership for which it is a registered agent by filing a statement with the secretary of state as required by RSA 304-A:49, II, except that the statement need be signed only by the registered agent. The statement shall recite that a copy of it has been mailed to the registered limited liability partnership or foreign registered limited liability partnership.

Source.

1996, 212:11, eff. Aug. 9, 1996. 2004, 248:31, 32, eff. July 1, 2004.

Amendments

—2004. Paragraph I(b): Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph III: Substituted “on the thirty-first day” for “31 days” in the third sentence.

304-A:50. Applicability of Chapter to Foreign and Interstate Commerce; Registration of Foreign Registered Limited Liability Partnerships.

I. A partnership, including a registered limited liability partnership, formed pursuant to an agreement governed by this chapter, may

conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country.

II. It is the intent of the legislature that the legal existence of registered limited liability partnerships formed pursuant to an agreement governed by this chapter be recognized outside the boundaries of this state and that the laws of this state governing such registered limited liability partnerships transacting business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

III. It is the policy of this state that the internal affairs of partnerships, including registered limited liability partnerships, formed pursuant to an agreement governed by this chapter, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of this state.

IV. Before transacting business in this state, a foreign registered limited liability partnership shall:

(a) Comply with any statutory or administrative registration of filing requirements governing the specific type of business in which the partnership is engaged; and

(b) File a notice of registration with the secretary of state, on such forms as the secretary shall provide, stating the name of the partnership:

(1) The address of its principal office.

(2) The jurisdiction in which it is registered as a registered limited liability partnership.

(3) The address of its registered office in this state and the name of its registered agent at that office for service of process in this state.

(4) Any other information that the partnership determines to include.

(5) A brief statement of the business in which the partnership engages.

V. The notice shall be accompanied by a certificate of legal existence or good standing, authenticated within 60 days prior to the filing of the notice, issued by the proper officer of the jurisdiction in which the foreign registered limited liability partnership is registered as such. The notice becomes effective at the time of filing with the secretary of state or at any later date not later than the ninetieth day after the date the notice is filed.

VI. A foreign registered limited liability partnership may register under paragraph IV under its name, provided, however, that the name must contain the words "limited liability partnership," "registered limited liability partnership" or "professional limited liability partnership," or the abbreviation "L.L.P.," "LLP," "R.L.L.P.," "P.L.L.P.," "PLLP," "P.L.L." or "PLL,"

as the last words or letters of its name. The name of a foreign registered limited liability partnership must satisfy the requirements of RSA 304-A:45, II and III. If the secretary of state determines that the real name of a foreign registered limited liability partnership is unavailable in this state, the foreign registered limited liability partnership may use a fictitious name, under which it may register and transact business in this state provided such fictitious name is available in this state.

VII. The internal affairs of foreign registered limited liability partnerships, and the liability of partners for debts, obligations and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of the jurisdiction in which the foreign registered limited liability partnership is registered.

VIII. (a) A notice of registration under RSA 304-A:50, IV remains effective until:

(1) It is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice; or

(2) The effective cancellation date in a notice from the secretary of state that the partnership has failed to pay the annual fee, or has failed to notify the secretary of state within 60 days that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued or is without a registered agent or registered office in this state for 60 days or more. The secretary of state shall send such notice to the partnership 60 days or more prior to the effective cancellation date.

(b) A withdrawal notice under subparagraph (a)(1) shall contain the name of the registered limited liability partnership and the date on which it originally registered with the secretary of state as a foreign registered limited liability partnership.

IX. A foreign registered limited liability partnership is not subject to RSA 305-A.

X. A foreign registered limited liability partnership withdrawn under RSA 304-A:50, VIII(a)(2) may apply to the secretary of state for reinstatement by completion of a reinstatement form together with payment of fees in arrears at the time of withdrawal. Beyond 120 days a reinstatement must be accompanied by, in addition to the above, annual fees for the years since the withdrawal, if the foreign limited liability partnership was doing business in this state during those years, and a certificate from the New Hampshire department of revenue administration indicating there are no taxes due that department.

XI. A foreign registered limited liability partnership which has been operating with the approval of the department of justice prior to the effective date of this paragraph, shall have up to 30 days after the effective date of this

paragraph to register as a foreign registered limited liability partnership.

Source.
1996, 212:11, eff. Aug. 9, 1996; 1997, 61:4, eff. Jan. 1, 1998; 2006, 316:9, eff. July 1, 2006.

Amendments
—**2006.** Paragraph X: Rewrote the former first sentence as the present first and second sentences.
—**1997.** Paragraph VIII(a)(2): Substituted “pay the annual fee” for “file the annual notice with the required fees” following “partnership has failed to” in the first sentence.

304-A:51. Execution of Documents; Filing Requirements; Fees.

I. Except as specifically provided in other sections of this chapter, the documents shall be executed by one or more partners authorized to execute the documents. If the partner executing the document is other than a natural person, the document shall be executed on the partner's behalf by a general partner of a limited partnership, an officer of a corporation, a member or manager of a limited liability company, or a person authorized by law to execute on behalf of the partner. To file a document with the secretary of state under subparagraphs II(a), (d), (f), (g), (h), and (i), the original and one exact or conformed copy of the document shall be delivered to the office of the secretary of state along with the prescribed fee. The copy shall be stamped with the word “FILED” and the date and returned to the partnership.

II. The secretary of state shall collect the following fees for:

(a) Registration of limited liability partnership under RSA 304-A:44, I	\$50
(b) Annual fee under RSA 304-A:47	\$100
(c) Late filing fee under RSA 304-A:47, III	\$50
(d) Withdrawal of registered limited liability partnership under RSA 304-A:44, IV(a)(1)	\$35
(e) Name reservation, notice of transfer of reservation, or notice of cancellation under RSA 304-A:46, II	\$15
(f) Notice of change under RSA 304-A:48	\$35
(g) Notice of change of name or address of registered agent or registered office under RSA 304-A:49, II	\$15
(h) Notice of registration of foreign limited liability partnership under RSA 304-A:50, IV	\$50
(i) Withdrawal notice of foreign limited liability partnership under RSA 304-A:50, VIII(a)(1)	\$35

III. The secretary of state may:

(a) Certify copies of any paper on file as provided for by this chapter, for a fee of \$1 per page and \$5 for the certificate.

(b) Issue any certificate, including but not limited to a certificate of registration, other than a certification of a copy under subpara-

graph III(a), for a fee of \$5, except that for issuing any certificate of the secretary of state that recites all of the filings of a registered limited liability partnership or foreign limited liability partnership, the fee shall be \$10.

IV. The secretary of state shall establish, and may from time to time amend, a schedule of specific fees payable under this chapter.

V. (a) Except as provided in paragraph VI, a document accepted for filing is effective:

(1) At the close of business on the date it is filed, as evidenced by the secretary of state's date endorsement of the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document filed electronically shall be effective upon the date and time of acceptance by the secretary of state corporate database and application or as specified in accordance with paragraph VI.

VI. A document filed in the office of the secretary of state may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective as of the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

Source.
1996, 212:11, eff. Aug. 9, 1996; 1997, 61:5, eff. Jan. 1, 1998; 120:7, eff. Aug. 8, 1997; 2004, 248:33-35, 65, eff. July 1, 2004; 2006, 81:3, eff. May 5, 2006.

Amendments
—**2006.** Paragraph II(c): Substituted “RSA 304-A:47, III \$50” for “RSA 304-A:47, \$25 per month”.
—**2004.** Paragraph II(a): Substituted “\$50” for “\$35”. Paragraph II(c): Substituted “\$25 per month” for “\$50”. Paragraph II(h): Substituted “\$50” for “\$35”. Paragraph V: Designated the introductory paragraph as subpar. (a), redesignated subpars. (a) and (b) as subpars. (1) and (2) and added subpar. (b).
—**1997.** Paragraph II(b): Chapter 61 substituted “fee” for “notice.” Paragraphs V and VI: Added by Chapter 120.

Reimbursement to Administratively Dissolved Entities.
2006, 81:5 provides: “The secretary of state shall reimburse any business entity that received a notice of administrative dissolution dated September 1, 2005 for any fee paid for a reinstatement application and any late fees paid in excess of \$50.”

Reimbursement of Late Fees.
2006, 81:6 provides: “The secretary of state shall reimburse any business entity, not included in section 5 of this act [which is noted above], late fees in excess of \$50 on annual returns paid by the business entity from May 1, 2005 through June 30, 2006.”

304-A:52. Administration.

I. The secretary of state shall collect all fees required under this chapter and shall pay them

to the state treasurer to be deposited in the general fund as unrestricted revenue, except as provided in paragraph II.

II. The state treasurer shall pay the expenses of administering this chapter out of any money in the treasury not otherwise appropriated until the fees collected pursuant to this chapter have been received by the treasurer. Thereafter, the treasurer shall pay the expenses of administering this chapter out of the fees collected under this chapter and shall reimburse the treasury for previous expenses paid by the treasurer. The governor is authorized to draw a warrant for the sums authorized by this section out of any money in the treasury not otherwise appropriated.

Source.

1996, 212:11, eff. Aug. 9, 1996.

304-A:53. Rulemaking.

The secretary of state may adopt rules, under RSA 541-A, necessary to implement the provisions of this chapter.

Source.

1996, 212:11, eff. Aug. 9, 1996.

304-A:54. Reserved Power of State of New Hampshire to Amend or Repeal Chapter.

All provisions of this chapter may be amended from time to time or repealed, and all rights of partners are subject to this reservation.

Source.

1996, 212:11, eff. Aug. 9, 1996. 1997, 120:8, eff. Aug. 8, 1997.

Amendments

—1997. Substituted “partners” for “members and managers” preceding “are subject”.

304-A:55. Powers of Licensing Authorities not Affected.

Notwithstanding any other provision of law, a partnership engaged in the rendering of professional services may register as a registered limited liability partnership or foreign registered limited liability partnership subject to:

(a) The laws and rules governing the rendering of professional services as defined in RSA 304-A:2, IX by partnerships; and

(b) Such other terms and conditions imposed by its governing licensing authority.

Source.

1996, 212:11, eff. Aug. 9, 1996.

Conversions and Mergers

304-A:56. Conversion of Partnership to Limited Partnership or Limited Liability Company.

I. A partnership may be converted to a lim-

ited partnership or a limited liability company pursuant to this section.

II. The terms and conditions of a conversion of a partnership to a limited partnership or a limited liability company must be approved by all of the partners.

III. After the conversion is approved by the partners, the partnership shall file a certificate of conversion together with a certificate of limited partnership, in the case of a conversion to a limited partnership, or a certificate of formation, in the case of a conversion to a limited liability company, in the jurisdiction in which the limited partnership or the limited liability company is to be formed and in accordance with the laws applicable to such other entity. The certificate of conversion must include:

(a) A statement that the partnership was converted to a limited partnership or a limited liability company from a partnership;

(b) Its former name; and

(c) A statement that all of the partners approved the conversion.

IV. The conversion takes effect upon the effective date and time of the certificate of limited partnership or the certificate of formation of the limited liability company, as the case may be.

V. A general partner who becomes a limited partner of a limited partnership or a member of a limited liability company as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership or limited liability company reasonably believes when entering the transaction that the limited partner or member is a general partner, the limited partner or member is liable for an obligation incurred by the limited partnership or limited liability company within 90 days after the conversion takes effect. The liability of the limited partner or member for all other obligations of the limited partnership or the limited liability company incurred after the conversion takes effect is that of a limited partner or a member, as the case may be, as provided in RSA 304-B and RSA 304-C.

Source.

1997, 120:9, eff. Aug. 8, 1997.

304-A:57. Conversion of Limited Partnership or Limited Liability Company to Partnership.

I. A limited partnership or a limited liability company may be converted to a partnership pursuant to this section and the laws applicable to such entities.

II. After the conversion is approved by the partners of a limited partnership in accordance with applicable law, the limited partnership shall cancel its certificate of limited partnership.

III. After the conversion is approved by the members of a limited liability company in accordance with applicable law, the limited liability company shall file a certificate of cancellation in the manner required by applicable law.

IV. The conversion takes effect upon the effective date and time of the certificate of cancellation of the limited partnership or the certificate of cancellation of the limited liability company, as the case may be.

V. A limited partner of a limited partnership or a member of a limited liability company who becomes a general partner as a result of the conversion remains liable only as a limited partner or a member for an obligation incurred by the limited partnership or the limited liability company before the conversion takes effect and is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

Source.

1997, 120:9, eff. Aug. 8, 1997.

304-A:58. Effect of Conversion; Entity Unchanged.

I. A partnership, limited partnership, or limited liability company that has been converted pursuant to RSA 304-A:56 or 304-A:57 is for all purposes the same entity that existed before the conversion.

II. When a conversion takes effect:

(a) All property owned by the converting partnership, limited partnership, or limited liability company remains vested in the converted entity;

(b) All obligations of the converting partnership, limited partnership, or limited liability company continue as obligations of the converted entity; and

(c) An action or proceeding pending against the converting partnership, limited partnership or limited liability company may be continued as if the conversion had not occurred.

Source.

1997, 120:9, eff. Aug. 8, 1997.

304-A:59. Merger of Partnerships.

I. Pursuant to a plan of merger approved as provided in paragraph III, a partnership may be merged with one or more partnerships, or with one or more limited partnerships or limited liability companies to the extent permitted by the laws applicable to such entities.

II. The plan of merger must set forth:

(a) The name of each partnership, limited partnership, or limited liability company that is a party to the merger;

(b) The name of the surviving entity into which the other partnerships, limited partnerships, or limited liability companies will merge;

(c) Whether the surviving entity is a partnership, a limited partnership, or a limited

liability company and the status of each partner;

(d) The terms and conditions of the merger;

(e) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

(f) The street address of the surviving entity's chief executive office.

III. The plan of merger must be approved:

(a) In the case of a partnership that is a party to the merger, by all of the partners;

(b) In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement; and

(c) In the case of a limited liability company that is a party to the merger by the vote required by the law of the jurisdiction in which the limited liability company is organized.

IV. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

V. A merger takes effect:

(a) If a certificate of merger is required to be filed pursuant to RSA 304-A:61, upon the effective date of the certificate of merger; or

(b) If a certificate of merger is not required to be filed pursuant to RSA 304-A:61, upon the approval of the plan of merger by all parties to the merger as provided in paragraph III unless the plan of merger specifies a delayed effective date and time, in which event the merger shall take effect upon such specified date and time.

Source.

1997, 120:9, eff. Aug. 8, 1997.

304-A:60. Effect of Merger.

I. When a merger takes effect:

(a) The separate existence of every partnership, limited partnership, or limited liability company that is a party to the merger, other than the surviving entity, ceases;

(b) All property owned by each of the merged partnerships, limited partnerships, or limited liability companies vests in the surviving entity;

(c) All obligations of every partnership, limited partnership, or limited liability company that is a party to the merger become the obligations of the surviving entity; and

(d) An action or proceeding pending against a partnership, limited partnership, or limited liability company that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

II. [Repealed.]

III. A partner of a surviving partnership or limited partnership is liable for:

(a) All obligations of a party to the merger for which the partner was personally liable before the merger;

(b) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(c) All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

IV. If the obligations incurred before the merger by a partnership that is a party to the merger are not satisfied out of the property of the surviving entity, the partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in RSA 304-A:40 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

Source.
1997, 120:9, eff. Aug. 8, 1997. 2003, 248:62I, eff. July 1, 2004.

Amendments
—2004. Paragraph II: Repealed.

304-A:61. Certificate of Merger.

I. In a merger of a limited liability company, registered limited liability partnership, or a limited partnership with a partnership in which a partnership is the surviving entity, the surviving entity shall file in the office of the secretary of state a certificate of merger, together with payment of a filing fee of \$35.

II. A certificate of merger must contain:

(a) The name of each partnership, limited partnership, or limited liability company that is a party to the merger;

(b) The name of the surviving entity into which the other entities were merged;

(c) The street address of the surviving entity's chief executive office and of an office in this state, if any;

(d) A statement that the executed agreement of merger is on file at the principal place of business of the surviving business entity and the address thereof; and

(e) A statement that a copy of the agreement of merger will be furnished by the surviving partnership, on request and without cost, to any limited partner of any constituent limited partnership or any member of any constituent limited liability company.

III. Except as otherwise provided in paragraph IV, for the purposes of RSA 304-A:10, property of a surviving partnership which be-

fore the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

IV. For the purposes of RSA 304-A:10, real property of a surviving partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the certificate of merger, if a certificate of merger is required by paragraph I, and otherwise a certificate of merger satisfying the requirements of paragraph II acknowledged by all persons executing the certificate, in the registry of deeds of the county in which the real property is located.

V. A filed and, if appropriate, recorded certificate of merger, stating the name of a partnership, limited partnership, or limited liability company that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by paragraph II, operates with respect to the partnerships, limited partnerships, or limited liability companies named to the extent provided in paragraphs III and IV.

Source.
1997, 120:9, eff. Aug. 8, 1997.

304-A:62. Nonexclusive.

This subdivision is not exclusive. Partnerships may be converted or merged in any other manner provided by law.

Source.
1997, 120:9, eff. Aug. 8, 1997.

CHAPTER 304-B

UNIFORM LIMITED PARTNERSHIP ACT

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Cross References.

Professional corporations, see RSA 294-A.
Uniform Partnership Act, see RSA 304-A.

NOTES TO DECISIONS

Construction with other laws

The rights of judgment creditors of limited partners are not limited to those set forth in this chapter 304-B, and, therefore, it is not error for a trial court to import the remedial provisions of RSA chapter 304-A into this chapter. *Baybank v. Catamount Constr., Inc.*, 141 N.H. 780, 693 A.2d 1163, 1997 N.H. LEXIS 37 (1997).

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Assisting Clients in Choosing the Legal Form of Their Business: A Three-Step Method," see 33 N.H.B.J. 321 (1992).

For article, "Asset Protection Planning in New Hampshire," see 36 N.H.B.J. 5 (March 1995).

General Provisions

304-B:1. Definitions.

As used in this chapter, unless the context otherwise requires:

I. "Certificate of limited partnership" means the certificate referred to in RSA 304-B:8, and the certificate as amended or restated.

II. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

III. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in RSA 304-B:23.

IV. "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

V. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

VI. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

VII. "Limited partnership" and "domestic limited partnership" mean a partnership formed by 2 or more persons under the laws of this state and having one or more general partners and one or more limited partners.

VIII. "Partner" means a limited or general partner.

IX. "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

X. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

XI. "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

XII. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:2. Name.

I. The name of each limited partnership as set forth in its certificate of limited partnership:

(a) Shall contain without abbreviation the words "limited partnership" as the last words of its name;

(b) May not contain the name of a limited partner unless (1) it is also the name of a general partner or the corporate name of a corporate general partner, or (2) the business of the limited partnership had been carried on under that name before the admission of that limited partner.

II. A limited partnership name shall not contain language stating or implying that the limited partnership is organized for a purpose other than that permitted by RSA 304-B:6 and its certificate of limited partnership.

III. Except as authorized by paragraphs IV and V, a limited partnership name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(c) The fictitious name of another foreign corporation authorized to transact business in this state.

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(e) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

IV. A limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in paragraph III, as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(a) The holder or holders of the name as described in paragraph III gives written consent to use the name that is not distinguishable from, or likely to be confused with or mistaken for the name of the applying limited partnership; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(b) The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying limited partnership; or

(c) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

V. A limited partnership may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user limited partnership:

(a) Has merged with the other entity;

(b) Has been formed by reorganization of the other entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other entity.

VI. This chapter does not control the use of fictitious names.

VII. Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a domestic limited partnership under the same name as the trade name.

Source.

1987, 349:1. 1991, 67:4, eff. May 9, 1991. 1996, 239:2, eff. Aug. 9, 1996. 1999, 293:5, eff. July 16, 1999. 2004, 248:36, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

—1999. Paragraph II: Rewritten to the extent that a detailed comparison would be impracticable.

—1996. Designated the former introductory paragraph as par. I, redesignated former par. I as par. I(a), redesignated former par. II as par. I(b) and substituted “(1)” for “(a)” and “(2)” for “(b)” in that paragraph, added a new par. II and deleted former par. III.

—1991. Paragraph III: Inserted “or New Hampshire investment trust” following “partnership” in two places.

304-B:3. Reservation of Name.

I. The exclusive right to the use of a name may be reserved by:

(a) Any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(c) Any foreign limited partnership intending to register in this state and adopt that name; and

(d) Any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.

II. The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may not again reserve the same name until more than 60 days after the expiration of the last 120-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Certificates of limited partnerships generally, see RSA 304-B:8.

Fee for reservation of name, see RSA 304-B:64.

Registration of foreign limited partnerships generally, see RSA 304-B:49.

304-B:4. Specified Office and Agent.

Each limited partnership shall continuously maintain in this state:

I. A registered office that may be the same as any of its places of business; and

II. A registered agent, which agent may be:

(a) An individual who resides in this state and whose business office is identical with the registered office; or

(b) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose business office is identical with the registered office; or

(c) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or

(d) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

Source.

1987, 349:1, eff. Jan. 1, 1988. 2004, 248:37, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

304-B:5. Records to be Kept.

I. Each limited partnership shall keep at the office referred to in RSA 304-B:4, I the following:

(a) A current list of the full name and last known business address of each partner, separately identifying the general partners (in alphabetical order) and the limited partners (in alphabetical order);

(b) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(c) Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the 3 most recent years;

(d) Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years; and

(e) Unless contained in a written partnership agreement, a writing setting out:

(1) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(2) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(3) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

(4) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

II. Records kept under this section are subject to inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Assignment of partnership interests generally, see RSA 304-B:39 et seq.

Dissolution generally, see RSA 304-B:44 et seq.

Distributions and withdrawal generally, see RSA 304-B:31 et seq.

Finances generally, see RSA 304-B:27 et seq.

304-B:6. Nature of Business.

A limited partnership may carry on any business that a partnership without limited partners may carry on, except any association formed under any other statute of this state, or formed under any statute adopted by authority, other than the authority of this state, is not a limited partnership under this chapter, unless such association was a limited partnership in this state prior to the adoption of this chapter.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Partnerships generally, see RSA 304-A.

Voluntary corporations and associations generally, see RSA 292.

304-B:7. Business Transactions of Partner with Partnership.

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Formation; Certificate of Limited Partnership

Cross References.

Foreign partnerships, see RSA 304-B:48 et seq.

304-B:8. Certificate of Limited Partnership.

I. In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the secretary of state. The certificate shall set forth:

- (a) The name of the limited partnership;
- (b) The address of the office and the name and address of the agent for service of process required to be maintained by RSA 304-B:4;
- (c) The name and the business address of each general partner;
- (d) The latest date upon which the limited partnership is to dissolve; and
- (e) Any other matters the general partners determine to include therein.

II. A limited partnership is formed at the close of business on the date of the filing of the certificate of limited partnership in the office of the secretary of state, or the effective time or the delayed effective time and date specified in accordance with RSA 304-B:13, IV in the certificate of limited partnership if, in any case, there

has been substantial compliance with the requirements of this section. A limited partnership filed electronically will be effective upon the date and time of acceptance by the secretary of state corporate database and application or as specified in accordance with RSA 304-B:13, IV.

Source.

1987, 349:1, eff. Jan. 1, 1988. 1997, 120:10, eff. Aug. 8, 1997. 2004, 248:38, eff. July 1, 2004.

Amendments

—2004. Paragraph II: Deleted “together with the certificate required by RSA 421-B:13, I-a(b)” following “secretary of state” in the first sentence and added the second sentence.

—1997. Paragraph II: Substituted “close of business on the date” for “time” following “formed at the,” “the effective time or the delayed effective time and date” for “any later time” preceding “specified,” and “any” for “either” preceding “case.”

Cross References.

Execution of certificates, see RSA 304-B:11, 12.

Fee for certificates, see RSA 304-B:64.

Filing of certificates, see RSA 304-B:13.

Liability for false statements in certificates, see RSA 304-B:14.

304-B:9. Amendment to Certificate.

I. A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

- (a) The name of the limited partnership;
- (b) The date of filing the certificate; and
- (c) The amendment to the certificate.

II. Within 30 days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

- (a) The admission of a new general partner;
- (b) The withdrawal of a general partner;
- (c) The continuation of the business under RSA 304-B:44 after an event of withdrawal of a general partner; or
- (d) The resignation of the registered agent.

III. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

IV. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

V. No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in paragraph II of this section if the amendment is filed within the 30-day period specified in paragraph II.

VI. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

Source.

1987, 349:1, 1988, 62:1, eff. June 10, 1988. 2006, 316:10, eff. July 1, 2006.

Amendments

—2006. Paragraph II: Deleted “or” at the end of subpar. (b), added “or” at the end of subpar. (c), and added subpar. (d).

—1988. Paragraph II: Inserted “general” preceding “partner” in subpars. (a) and (b).

Cross References.

Execution of certificates, see RSA 304-B:11, 12.
 Fee for amendment of certificates, see RSA 304-B:64.
 Filing of certificates, see RSA 304-B:13.
 Liability for false statements in certificates, see RSA 304-B:14.

304-B:9-a. Resignation of Registered Agent.

I. The registered agent of a limited partnership formed in this state or a foreign limited partnership authorized to do business in this state may resign his or her agency appointment by signing and delivering to the secretary of state for filing the original and one exact or conformed copy of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

II. The secretary of state shall mail the copy to the limited partnership at its principal office address of record.

III. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source.

2006, 316:11, eff. July 1, 2006.

304-B:10. Cancellation of Certificate.

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the secretary of state and set forth:

- I. The name of the limited partnership;
- II. The date of filing of its certificate of limited partnership;
- III. The reason for filing the certificate of cancellation;
- IV. The effective date and time of cancellation if it is not to be effective upon the close of business on the date of the filing of the certificate; and
- V. Any other information the general partners filing the certificate determine.

Source.

1987, 349:1, eff. Jan. 1, 1988. 1997, 120:11, eff. Aug. 8, 1997.

Amendments

—1997. Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Dissolution generally, see RSA 304-B:44 et seq.

Execution of certificates, see RSA 304-B:11, 12.

Fee for certificates, see RSA 304-B:64.

Filing of certificates, see RSA 304-B:13.

Liability for false statements in certificates, see RSA 304-B:14.

304-B:11. Execution of Certificates.

I. Each certificate required by this chapter to be filed in the office of the secretary of state shall be executed in the following manner:

(a) An original certificate of limited partnership must be signed by all general partners;

(b) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner;

(c) A certificate of cancellation must be signed by all general partners; and

(d) A certificate of merger and a certificate of conversion must be signed by all the general partners.

II. Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

III. The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

Source.

1987, 349:1, eff. Jan. 1, 1988. 1997, 120:12, eff. Aug. 8, 1997.

Amendments

—1997. Paragraph I: Substituted “chapter” for “subdivision” in the introductory paragraph, added subpar. (d) and made other minor stylistic changes.

Cross References.

Liability for false statements in certificates, see RSA 304-B:14.

Perjury generally, see RSA 641:1.

304-B:12. Execution by Judicial Act.

If a person required by RSA 304-B:11 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior court to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:13. Filing in Office of Secretary of State.

I. One original and one exact or conformed copy of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) and of any certificate of merger or

certificate of conversion shall be delivered to the secretary of state. Documents filed electronically need not be filed in duplicate. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) Endorse on each copy the word "filed" and the day, month, and year of the filing thereof;

(b) File the original in the secretary of state's office; and

(c) Return the exact or conformed copy to the person who filed it or the person's representative.

II. Upon the effective date and time of a certificate of amendment (or judicial decree of amendment) in the office of the secretary of state, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date and time of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is cancelled.

III. Except as provided in paragraph IV, a document accepted for filing is effective:

(a) At the close of business on the date it is filed, as evidenced by the secretary of state's date endorsement of the original document; or

(b) At the time specified in the document as its effective time on the date it is filed; or

(c) Upon the date and time of acceptance by the secretary of state corporate database and application, if filed electronically.

IV. A document filed in the office of the secretary of state may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective as of the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

Source.

1987, 349:1, eff. Jan. 1, 1988. 1997, 120:13, eff. Aug. 8, 1997. 2004, 248:39, eff. July 1, 2004. 2006, 316:12, eff. July 1, 2006.

Amendments

—2006. Paragraph I: Substituted "One original and one exact or conformed copy" for "two signed copies" in the first sentence, substituted "copy" for "duplicate original" in subpar. (a), substituted "the original" for "one duplicate original" in subpar. (b), and substituted "exact or conformed copy" for "other duplicate original" in subpar. (c).

—2004. Paragraph I: Added the second sentence in the introductory paragraph.

Paragraph III: Made a minor stylistic change in subpar. (b) and added subpar. (c).

—1997. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Recordkeeping requirements generally, see RSA 304-B:5.

304-B:14. Liability for False Statement in Certificate.

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

I. Any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

II. Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under RSA 304-B:12.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:15. Scope of Notice.

The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:16. Delivery of Certificates to Limited Partners.

Upon the return by the secretary of state pursuant to RSA 304-B:13 of a certificate marked "filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Mergers and Conversions

304-B:16-a. Merger.

I. As used in this section, "other business entity" means a domestic or foreign corporation, limited liability company, or partnership, whether general or limited, that is authorized by applicable statute to merge with a limited partnership.

II. Pursuant to an agreement of merger, a limited partnership may merge with or into one or more limited partnerships or other business

entities, with such limited partnership or such other business entity as the agreement shall provide being the surviving limited partnership or other business entity.

III. Each such limited partnership and other entity shall enter into a written agreement or plan of merger. The agreement shall state:

(a) The terms and conditions of the merger;
(b) The mode of carrying the same into effect;

(c) The manner of converting the partnership interests of each such limited partnership and the shares or the limited liability company or partnership interests of each such other entity into shares, limited liability company or partnership interests, or other securities of the entity surviving from such merger, and if any partnership interests of any such limited partnership or any shares, limited partnership or limited liability company or partnership interests of any such other entity are not to be converted solely into shares, limited liability company or partnership interests, or other securities of the entity surviving from such merger, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or limited liability company or partnership interests are to receive in exchange for, or upon conversion of, such shares or limited partnership or limited liability company interests and the surrender of any certificates evidencing such shares or interests which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, limited liability company or partnership interests, or other securities of the entity surviving from such merger; and

(d) Such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving corporation or other entity. Any of the terms of the agreement or plan of merger may be made dependent upon facts ascertainable outside of such agreement or plan provided that the manner in which such facts shall operate upon the terms of the agreement or plan is clearly and expressly set forth in the agreement or plan of merger.

IV. Unless otherwise provided in the partnership agreement, a merger shall be approved by each limited partnership which is to merge (1) by all general partners, and (2) by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. In connection with a merger hereunder, rights or securities of, or interests in, a limited part-

nership or other business entity which is a constituent party to the merger may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving limited partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a limited partnership or other business entity which is not the surviving limited partnership or other business entity in the merger. Notwithstanding prior approval, an agreement of merger may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger at any time before the certificate of merger is filed.

V. If a limited partnership is merging under this section, the limited partnership or other business entity surviving in the merger shall file in the office of the secretary of state a certificate of merger setting forth:

(a) The name and jurisdiction of formation or organization of each of the limited partnerships or other business entities which is to merge;

(b) That an agreement of merger has been approved and executed by each of the limited partnerships or other business entities which is to merge;

(c) The name of the surviving limited partnership or other business entity;

(d) If a corporation is the surviving entity of the merger, the plan of merger;

(e) If shareholder approval of any corporation party to the merger was not required, a statement to that effect;

(f) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(g) In the case of a merger in which a corporation is the surviving entity, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation;

(h) If the surviving business entity is not a corporation, that the executed agreement of merger is on file at the principal place of busi-

ness of the surviving business entity and the address thereof;

(i) That a copy of the agreement of merger will be furnished by the surviving limited partnership or other business entity, on request and without cost, to any partner or any limited partnership or any person holding an interest in any other business entity which is to merge;

VI. Upon the merger taking effect, a surviving foreign other entity of a merger is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners of each limited partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting parties of each limited partnership party to the merger or share exchange the amount, if any, to which they are entitled under RSA 304-C:16-b.

VII. A merger shall be effective upon the effective date and time of the certificate of merger.

VIII. A certificate of merger shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving entity in the merger.

IX. Notwithstanding anything to the contrary contained in a partnership agreement, a partnership agreement containing a specific reference to this paragraph may provide that an agreement of merger approved in accordance with paragraph VII of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement for a limited partnership if it is the surviving limited partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time and date of the merger. The provisions of this paragraph shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law, including that the partnership agreement of any constituent limited partnership to the merger (including a limited partnership formed for the purpose of consummating a merger) shall be the partnership agreement of the surviving limited partnership.

X. When any merger shall have become effective under this section, for all purposes of the laws of the state of New Hampshire, all of the rights, privileges and powers of each of the limited partnerships and other business entities that have merged, and all property, real, personal and mixed, and all debts due to any of said limited partnerships and other business entities, as well as all other things and causes of action belonging to each of such limited partnerships and other business entities, shall be

vested in the surviving limited partnership or other business entity, and shall thereafter be the property of the surviving limited partnership or other business entity as they were of each of the limited partnerships and other business entities that have merged, and the title to any real property vested by deed or otherwise, under the laws of the state of New Hampshire, in any of such limited partnerships and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said limited partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the limited partnerships and other business entities that have merged shall thenceforth attach to the surviving limited partnership or other business entity, and may be enforced against it to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it. Unless otherwise agreed, a merger of a limited partnership, including a limited partnership which is not the surviving entity in the merger, shall not require such limited partnership to wind up its affairs under RSA 304-B:46 or pay its liabilities and distribute its assets under RSA 304-B:47.

XI. Except as provided by agreement with a person to whom a general partner of a limited partnership is obligated, a merger of a limited partnership that has become effective shall not affect any obligation or liability existing at the time of such merger of a general partner of a limited partnership which is merging.

XII. If a limited partnership is a constituent party to a merger that shall have become effective, but the limited partnership is not the surviving entity of the merger, then a judgment creditor of a general partner of such limited partnership may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the surviving entity of the merger unless:

(a) A judgment based on the same claim has been obtained against the surviving entity of the merger and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) The surviving entity of the merger is a debtor in bankruptcy;

(c) The general partner has agreed that the creditor need not exhaust the assets of the limited partnership that was not the surviving entity of the merger;

(d) The general partner has agreed that the creditor need not exhaust the assets of the surviving entity of the merger;

(e) A court grants permission to the judgment creditor to levy execution against the assets of the general partner based on a finding that the assets of the surviving entity of the merger that are subject to execution are clearly insufficient to satisfy the judgment, that ex-

haustion of the assets of the surviving entity of the merger is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(f) Liability is imposed on the general partner by law or contract independent of the existence of the surviving entity of the merger.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-b. Approval of Conversion of a Limited Partnership.

A limited partnership may convert to an other business entity, as defined in RSA 304-B:16-a, I, other than a limited partnership, upon the authorization of such conversion in accordance with this section and to the extent authorized by and in accordance with the laws applicable to conversion to such other business entity. If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger that involves the limited partnership as a constituent party to the merger. If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion shall be authorized by the approval (1) by all general partners, and (2) by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

Source.

1997, 120:14, eff. Aug. 8, 1997.

Dissenters' Rights

304-B:16-c. Definitions and Construction.

In this subdivision:

I. "Dissenter" means a limited partner who is entitled to dissent from limited partnership action under RSA 304-B:16-d and who exercises that right when and in the manner required under this subdivision.

II. "Fair value" means the value of the dissenter's partnership interest of a limited part-

nership immediately before the effective date of the limited liability action referred to in RSA 304-B:16-d, excluding any appreciation or depreciation in anticipation of the limited partnership action.

III. "Interest" means interest from the effective date of the action referred to in RSA 304-B:16-d that gave rise to the limited partner's right to dissent until the date of payment, at the average auction rate paid on United States treasury bills with a maturity of 6 months (or the closest maturity thereto) as of the auction date for such treasury bills closest to such effective date.

IV. "Limited partnership" means a limited partnership whose limited partners have obtained rights to dissent under RSA 304-B:16-d and includes any successor by merger or conversion.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-d. Dissenters' Rights.

I. A limited partner is entitled to dissent from, and obtain payment of, the fair value of the limited partner's partnership interest upon either of the following actions:

(a) Consummation of a plan of merger to which the limited partnership is a party.

(b) Consummation of a plan of conversion of the limited partnership to some other business entity.

II. A limited partner entitled to dissent and obtain payment for such limited partner's partnership interest under this subdivision may not challenge the limited partnership action creating such limited partner's entitlement unless the action is unlawful or fraudulent with respect to the limited partner or the limited partnership.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-e. Notice of Dissenters' Rights.

I. If the proposed action of the limited partnership creating dissenters' rights under RSA 304-B:16-d is submitted to a vote at a meeting of the limited partners, the meeting notice must state that limited partners are or may be entitled to assert dissenters' rights under this subdivision and be accompanied by a copy of this subdivision.

II. If the limited partnership action creating dissenters' rights under RSA 304-B:16-d is taken without a vote of the limited partners, the limited partnership shall notify in writing all limited partners entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in RSA 304-B:16-g.

III. A limited partnership's failure to give notice pursuant to this section shall not invalidate the limited partnership action.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-f. Notice of Intent to Demand Payment.

I. If proposed action of a limited partnership creating dissenters' rights under RSA 304-B:16-d is submitted to a vote at a meeting of the limited partners, a limited partner who wishes to assert dissenters' rights shall:

(a) Deliver to the limited partnership before the vote is taken a written notice of the member's intent to demand payment for the limited partner's limited partnership interest if the proposed action is effectuated.

(b) Not vote the limited partner's limited partnership interest in favor of the proposed action.

II. No such written notice of intent to demand payment is required of any limited partner to whom the limited partnership has failed to provide the notice required by RSA 304-B:16-e.

III. A limited partner who does not satisfy the requirements of this section is not entitled to payment for such limited partner's limited partnership interest under this subdivision.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-g. Dissenters' Notice.

I. If proposed action of a limited partnership creating dissenters' rights under RSA 304-B:16-d is authorized at a meeting of the limited partners, the limited partnership shall deliver a written dissenters' notice to all limited partners who have satisfied the requirements of RSA 304-B:16-f.

II. The dissenters' notice must be sent no later than 10 days after the action of the limited partnership was authorized by the members or effectuated, whichever is the first to occur, and shall:

(a) State where the payment demand shall be sent;

(b) Supply a form for demanding payment that includes the date of the first announcement to news media or to limited partners of the principal terms of the proposed limited partnership action and requires that the person asserting dissenters' rights certify whether or not the limited partner acquired the limited partnership interest before that date;

(c) Set a date by which the limited partnership must receive the payment demand, which date may not be fewer than 30 days and not more than 60 days after the date of the notice required by paragraph II is sent; and

(d) Be accompanied by a copy of this subdivision if the limited partnership has not previously sent a copy of this subdivision to the limited partner pursuant to RSA 304-B:16-e.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-h. Duty to Demand Payment.

I. A limited partner sent a dissenters' notice described in RSA 304-B:16-g must demand payment and certify whether the limited partner acquired the limited partnership interest before the date required to be set forth in the dissenters' notice pursuant to RSA 304-B:16-g.

II. A limited partner who demands payment under paragraph I retains all of the rights of a limited partner until those rights are canceled or modified by consummation of the proposed action of the limited partnership.

III. A limited partner who does not demand payment by the date set forth in the dissenters' notice is not entitled to payment of fair value for such limited partner's partnership interest under this subdivision.

IV. A demand for payment filed by a limited partner may not be withdrawn unless the limited partnership with which it was filed or the surviving limited partnership or other business entity consents to such withdrawal.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-i. Payment.

I. Except as provided in RSA 304-B:16-k, as soon as the proposed limited partnership action is effectuated, or upon receipt of a payment demand, whichever is later, the limited partnership shall pay each dissenter who complied with RSA 304-B:16-h the amount the limited partnership estimates to be the fair value of such dissenter's partnership interest, plus accrued interest.

II. The payment shall be accompanied by:

(a) The limited partnership's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and the latest available interim financial statements, if any;

(b) A statement of the limited partnership's estimate of the fair value of the limited partnership interest;

(c) An explanation of how the value of the limited partnership interest was calculated;

(d) A statement of the dissenter's right to demand payment under RSA 304-B:16-l; and

(e) A copy of this subdivision, if the limited partnership has not previously sent a copy of this subdivision to the limited partner pursuant to RSA 304-B:16-e or RSA 304-B:16-g.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-j. Failure to Take Action.

If the limited partnership does not effectuate the proposed action that gave rise to the dis-

senters' rights within 60 days after the date set for demanding payment, it shall send a new dissenters' notice under RSA 304-B:16-e and repeat the payment demand procedure if it effectuates the proposed action.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-k. After-Acquired Limited Partnership Interests.

I. A limited partnership may elect to withhold payment required by RSA 304-B:16-i from a dissenter unless the dissenter was a limited partner before the date set forth in the dissenters' notice as the date of the first announcement to news media or to limited partners of the principal terms of the proposed limited partnership action.

II. To the extent the limited partnership elects not to withhold payment under paragraph I, after effectuating the proposed limited partnership action, it shall estimate the fair value of the limited partnership interest, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The limited partnership shall send with its offer a statement of its estimate of the fair value of the limited partnership interest, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RSA 304-B:16-l.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-l. Procedure if Limited Partner Dissatisfied With Payment of Offer.

I. A dissenter may notify the limited partnership in writing of the dissenter's own estimate of the fair value of such dissenter's limited partnership interest and amount of interest due, and demand payment of the dissenter's estimate (less any payment under RSA 304-B:16-i), or reject the limited partnership's offer under RSA 304-B:16-k; and demand payment of the fair value of the limited partnership interest and interest due, if:

(a) The dissenter believes that the amount paid under RSA 304-B:16-i or offered under RSA 304-B:16-k is less than the fair value of such dissenter's limited partnership interest or that the interest due is incorrectly calculated; or

(b) The limited partnership fails to make payment under RSA 304-B:16-i within 60 days after the date set for demanding payment.

II. A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited partnership of such dissenter's demand in writing under paragraph I within 30 days after the limited partnership

made or offered payment for such dissenter's limited partnership interest.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-m. Court Action.

I. If a demand for payment under RSA 304-B:16-l remains unsettled, the limited partnership shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the limited partnership interest and accrued interest. If the limited partnership does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

II. The limited partnership shall commence the proceeding in superior court of the county where the limited partnership's principal executive office (or, if none in this state, its registered office) is located. If the limited partnership is a foreign entity without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic limited partnership merged with or converted into the foreign entity was located.

III. The limited partnership shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their limited partnership interests, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

IV. The jurisdiction of the court in which the proceeding is commenced under paragraph II is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

V. Each dissenter made a party to the proceeding is entitled to judgment:

(a) For the amount, if any, by which the court finds the fair value of the dissenter's partnership interest plus accrued interest exceeds the amount paid by the limited partnership; or

(b) For the fair value, plus accrued interest, of such dissenter's after-acquired partnership interests for which the limited partnership elected to withhold payment under RSA 304-B:16-k.

VI. The limited partnership is entitled to judgment against each specific dissenter for the amount, if any, by which the court finds the fair value of such dissenter's partnership interest,

plus accrued interest, is less than the amount paid by the limited partnership to each dissenter.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-n. Court Costs and Counsel Fees.

I. The court in an appraisal proceeding commenced under RSA 304-B:16-m shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited partnership, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under RSA 304-B:16-l.

II. The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited partnership and in favor of any or all dissenters if the court finds the limited partnership did not substantially comply with the requirements of RSA 304-B:16-d through 304-B:16-l.

(b) Against either the limited partnership or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subdivision.

III. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the limited partnership, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

Source.

1997, 120:14, eff. Aug. 8, 1997.

304-B:16-o. Procedures as to Assignees of Financial Rights.

I. When an assignment of all or a portion of a limited partnership interest is in effect and a copy delivered to the limited partnership prior to the action described in RSA 304-B:16-i, then as to that limited partnership interest the provisions of RSA 304-B:16-c through RSA 304-B:16-n must be followed subject to the requirements of this section.

II. If the limited partner has not ceased to be a partner upon assignment of the limited partner's partnership interest prior to the action described in RSA 304-B:16-i, all rights to be exercised and actions to be taken by a limited partner under RSA 304-B:16-d through RSA

304-B:16-n shall be taken by the limited partner and not by an assignee of the limited partner's partnership interest. As between the limited partnership and the assignees, the actions taken or omitted by the limited partner bind the assignees, and the following requirements shall apply:

(a) Instead of remitting a payment under RSA 304-B:16-i, the limited partnership shall forward to the dissenter limited partner:

(1) The materials described in RSA 304-B:16-i, II;

(2) An offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the limited partner and the assignees of the limited liability company interest according to the terms of the assignments reflected in the required records; and

(3) A statement of that allocation.

(b) If the dissenter limited partner accepts the amount of the offer made under subparagraph (a) but disputes the allocation, the dissenter shall promptly so notify the limited partnership and within 60 days after the notification commence a proceeding and petition the court to determine the proper allocation. The limited partner shall commence the proceeding in superior court of the county in which the principal office of the limited partnership (or if none, its registered office) is located, or in the case of a surviving foreign limited partnership or other entity that is complying with this section following a merger with or conversion of a limited partnership, the limited partner shall commence the proceeding in superior court of the county in this state in which the last registered office of the limited partnership was located. The petition shall name as parties the limited partner, the limited partnership and all assignees of the limited partner's limited partnership interest. Upon being served with the petition, the limited partnership shall promptly pay into the court the amount offered under paragraph II and shall then be dismissed from the proceeding.

(c) If the dissenter considers the amount offered under subparagraph (a) inadequate, the dissenter may decline the offer and demand payment under RSA 304-B:16-l. If the dissenter makes demand for payment, RSA 304-B:16-m and RSA 304-B:16-n apply with the court having jurisdiction also to determine the correctness of the allocation.

(d) If the limited partner fails to take action under either subparagraph (b) or (c), then:

(1) As to the limited partnership, both the member and the assignees of the limited partner's limited partnership interests are limited to the amount and allocation offered under subparagraph (a); and

(2) The limited partnership discharges its obligation of payment by making payment

according to the amount and allocation offered under subparagraph (a).

III. If the limited partner has ceased to be a limited partner upon assignment of the limited partner's partnership interest, the assignees of the limited partner's partnership interest shall be entitled to exercise all rights of the limited partner pursuant to RSA 304-B:16-d through RSA 304-B:16-n.

Source.

1997, 120:14, eff. Aug. 8, 1997.

Limited Partners

Cross References.

Formation of partnership generally, see RSA 304-B:8 et seq.

General partners, see RSA 304-B:22 et seq.

304-B:17. Admission of Limited Partners.

I. A person becomes a limited partner:

(a) At the time the limited partnership is formed; or

(b) At any later time specified in the records of the limited partnership for becoming a limited partner.

II. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(a) In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(b) In the case of an assignee of a partnership interest of a partner who has the power, as provided in RSA 304-B:42, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Amendment of partnership certificate, see RSA 304-B:9.

Withdrawal of limited partners, see RSA 304-B:33.

304-B:18. Voting.

Subject to RSA 304-B:19, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:19. Liability to Third Parties.

I. Except as provided in paragraph IV, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of

his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

II. A limited partner does not participate in the control of the business within the meaning of paragraph I solely by doing one or more of the following:

(a) Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

(b) Consulting with and advising a general partner with respect to the business of the limited partnership;

(c) Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(d) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(e) Requesting or attending a meeting of partners;

(f) Proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(1) The dissolution and winding up of the limited partnership;

(2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(3) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(4) A change in the nature of the business;

(5) The admission or removal of a general partner;

(6) The admission or removal of a limited partner;

(7) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(8) An amendment to the partnership agreement or certificate of limited partnership;

(9) Matters related to the business of the limited partnership not otherwise enumerated in paragraph II of this section, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(g) Winding up the limited partnership pursuant to RSA 304-B:46; or

(h) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this paragraph.

III. The enumeration in paragraph II does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

IV. A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by RSA 304-B:2, II, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Source.
1987, 349:1, eff. Jan. 1, 1988.

Cross References.
Liabilities of general partners, see RSA 304-B:24.

RESEARCH REFERENCES

New Hampshire Bar Journal.
For article, "Asset Protection Planning in New Hampshire," see 36 N.H.B.J. 5 (March 1995).

ALR.
Liability of limited partner arising from taking part in control of business under Uniform Limited Partnership Act. 79 A.L.R.4th 427.

304-B:20. Person Erroneously Believing Himself a Limited Partner.

I. Except as provided in paragraph II, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(a) Causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed; or

(b) Withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.

II. A person who makes a contribution of the kind described in paragraph I is liable as a general partner to any third party who transacts business with the enterprise (a) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (b) before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

Source.
1987, 349:1, eff. Jan. 1, 1988.

Cross References.
Liabilities of general partners, see RSA 304-B:24.

304-B:21. Information.

Each limited partner has the right to:

I. Inspect and copy any of the partnership records required to be maintained by RSA 304-B:5; and

II. Obtain from the general partners from time to time upon reasonable demand (a) true and full information regarding the state of the business and financial condition of the limited partnership, (b) promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year, and (c) other information regarding the affairs of the limited partnership as is just and reasonable.

Source.
1987, 349:1, eff. Jan. 1, 1988.

General Partners

Cross References.
Formation of partnerships generally, see RSA 304-B:8 et seq.
Limited partners, see RSA 304-B:17 et seq.

304-B:22. Admission of Additional General Partners.

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

Source.
1987, 349:1, eff. Jan. 1, 1988.

Cross References.
Amendment of partnership certificate, see RSA 304-B:9.
Withdrawal of general partners, see RSA 304-B:32.

304-B:23. Events of Withdrawal.

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

I. The general partner withdraws from the limited partnership as provided in RSA 304-B:32;

II. The general partner ceases to be a member of the limited partnership as provided in RSA 304-B:40;

III. The general partner is removed as a general partner in accordance with the partnership agreement;

IV. Unless otherwise provided in writing in the partnership agreement, the general partner:

(a) Makes an assignment for the benefit of creditors;

(b) Files a voluntary petition in bankruptcy;

(c) Is adjudicated as bankrupt or insolvent;

(d) Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or rule;

(e) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(f) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

V. Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or rule, the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within 90 days after the expiration of any such stay, the appointment is not vacated;

VI. In the case of a general partner who is a natural person:

(a) His death; or

(b) The entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

VII. In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

VIII. In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

IX. In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

X. In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:24. General Powers and Liabilities.

I. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

II. Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Liabilities of limited partners, see RSA 304-B:19, 20.

NOTES TO DECISIONS

Cited:

Cited in *Currier v. Amerigas Propane, L.P.*, 144 N.H. 122, 737 A.2d 1118, 1999 N.H. LEXIS 82 (1999).

304-B:25. Contributions by General Partner.

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Partnership finances generally, see RSA 304-B:27 et seq.

304-B:26. Voting.

The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Finance

Cross References.

Contributions by general partners, see RSA 304-B:25.

Dissolution generally, see RSA 304-B:44 et seq.

Distributions and withdrawal generally, see RSA 304-B:31 et seq.

304-B:27. Form of Contribution.

The contribution of a partner may be in cash,

property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Application of section.

1987, 349:5, I, provided that this section was to apply only to contributions and distributions made after January 1, 1988.

304-B:28. Liability for Contribution.

I. A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

II. Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to RSA 304-B:5, of the stated contribution that has not been made.

III. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the original obligation.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Application of section.

1987, 349:5, I, provided that this section was to apply only to contributions and distributions made after January 1, 1988.

304-B:29. Sharing of Profits and Losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value as stated in the partnership records required to be kept pursuant to RSA 304-B:5, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:30. Sharing of Distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value as stated in the partnership records required to be kept pursuant to RSA 304-B:5, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Distributions and Withdrawal

Cross References.

Assignment of partnership interests generally, see RSA 304-B:39 et seq.

Dissolution generally, see RSA 304-B:44 et seq.

Partnership finances generally, see RSA 304-B:27 et seq.

304-B:31. Interim Distributions.

Except as provided in this subdivision, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Distributions upon withdrawal, see RSA 304-B:34.

304-B:32. Withdrawal of General Partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Amendment of partnership certificate, see RSA 304-B:9.

304-B:33. Withdrawal of Limited Partner.

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the disso-

lution and winding up of the limited partnership, a limited partner may withdraw upon not less than 6 months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Amendment of partnership certificate, see RSA 304-B:9.

304-B:34. Distribution Upon Withdrawal.

Except as provided in this subdivision, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Interim distributions, see RSA 304-B:31.

304-B:35. Distribution in Kind.

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:36. Right to Distribution.

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:37. Limitations on Distributions.

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership inter-

ests, exceed the fair value of the partnership assets.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:38. Liability Upon Return of Contribution.

I. If a partner has received the return of any part of his contribution without violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

II. If a partner has received the return of any part of his contribution in violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of 6 years thereafter for the amount of the contribution wrongfully returned.

III. A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept pursuant to RSA 304-B:5, of his contribution which has not been distributed to him.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Application of section.

1987, 349:5, I, provided that this section was to apply only to contributions and distributions made after January 1, 1988.

Assignment of Partnership Interests

Cross References.

General rights and liabilities of general partners, see RSA 304-B:22 et seq.

General rights and liabilities of limited partners, see RSA 304-B:17 et seq.

304-B:39. Nature of Partnership Interest.

A partnership interest is personal property.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:40. Assignment of Partnership Interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the

assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:41. Rights of Creditor.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

Source.

1987, 349:1, eff. Jan. 1, 1988.

NOTES TO DECISIONS

Generally

This section did not provide for the appointment of a receiver and sale of a charged partnership interest, and the legislature intended that reference be made to the Uniform Partnership Act for the means of enforcing the creditor's rights in the charged partnership interest. *Baybank v. Catamount Constr., Inc.*, 141 N.H. 780, 693 A.2d 1163, 1997 N.H. LEXIS 37 (1997).

This section is not inconsistent with the remedial provisions of RSA 304-A:28, since the purpose of the charging order provisions under both statutes is to balance the need to protect the orderly operation of the partnership and the rights of creditors. *Baybank v. Catamount Constr., Inc.*, 141 N.H. 780, 693 A.2d 1163, 1997 N.H. LEXIS 37 (1997).

A court may properly look to RSA 304-A:28 for the means to enforce a charging order under this section when the latter remedy alone would be insufficient. *Baybank v. Catamount Constr., Inc.*, 141 N.H. 780, 693 A.2d 1163, 1997 N.H. LEXIS 37 (1997).

RESEARCH REFERENCES

New Hampshire Practice.

5 N.H.P. Civil Practice and Procedure §§ 60.01, 60.51.

New Hampshire Bar Journal.

For article, "Asset Protection Planning in New Hampshire," see 36 N.H.B.J. 5 (March 1995).

304-B:42. Right of Assignee to Become Limited Partner.

I. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (a) the assignor gives the assignee that right in accordance with authority described in the partnership agreement, or (b) all other partners consent.

II. An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is

liable for the obligations of his assignor to make and return contributions as provided in RSA 304-B:27-38. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

III. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under RSA 304-B:14 and RSA 304-B:28.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Applications of section.

1987, 349:5, II, provided that this section was to apply only to assignments made after January 1, 1988.

304-B:43. Power of Estate of Deceased or Incompetent Partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Dissolution

Cross References.

Distributions and withdrawal generally, see RSA 304-B:31 et seq.

Formation of partnerships generally, see RSA 304-B:8 et seq.

Partnership finances generally, see RSA 304-B:27 et seq.

304-B:44. Nonjudicial Dissolution.

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

I. At the time specified in the certificate of limited partnership;

II. Upon the happening of events specified in writing in the partnership agreement;

III. Written consent of all partners;

IV. An event of withdrawal of a general partner, unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited

partnership and to the appointment of one or more additional general partners if necessary or desired; or

V. Entry of a decree of judicial dissolution under RSA 304-B:45.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Amendment of partnership certificate, see RSA 304-B:9.

Winding up of partnership affairs, see RSA 304-B:46.

304-B:45. Judicial Dissolution.

On application by or for a partner, the superior court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

Source.

1987, 349:1, eff. Jan. 1, 1988.

NOTES TO DECISIONS

Generally

A bank had no standing to seek judicial dissolution of limited partnership interests as the bank was only a creditor with a charging order on the limited partnership interests in its attempt to satisfy its judgment out of partnership assets, but was not a purchaser of the partnership interests as there was no foreclosure of the partnership interests. *Baybank v. Catamount Constr., Inc.*, 141 N.H. 780, 693 A.2d 1163, 1997 N.H. LEXIS 37 (1997).

304-B:46. Winding Up.

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the superior court may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:47. Distribution of Assets.

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

I. To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under RSA 304-B:31 or RSA 304-B:34;

II. Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under RSA 304-B:31 or RSA 304-B:34; and

III. Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Foreign Limited Partnerships

Cross References.

Rights and liabilities of general partners generally, see RSA 304-B:22 et seq.

Rights and liabilities of limited partners generally, see RSA 304-B:17 et seq.

RESEARCH REFERENCES

New Hampshire Practice.

4 N.H.P. Civil Practice and Procedure § 14.22.

304-B:48. Law Governing.

Subject to the constitution of this state, (a) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (b) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:49. Registration.

Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

I. The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;

II. The state and date of its formation;

III. The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint. The registered agent may be:

(a) An individual who resides in this state and whose business office is identical with the registered office; or

(b) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose business office is identical with the registered office; or

(c) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or

(d) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

IV. [Repealed.]

V. The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the

principal office of the foreign limited partnership;

VI. The name and business address of each general partner; and

VII. The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is cancelled or withdrawn.

Source.

1987, 349:1. 1988, 62:2. 1992, 255:5, eff. Jan. 1, 1993. 2004, 248:40, 62, II, eff. July 1, 2004.

Amendments

—2004. Paragraph III: Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph IV: Repealed.

—1992. Paragraph IV: Substituted "RSA 293-A:15.10" for "RSA 293-A:119-121" in the second sentence.

—1988. Paragraph IV: Added the second sentence.

Cross References.

Maintenance of office and agent generally, see RSA 304-B:4.
Recordkeeping requirements generally, see RSA 304-B:5.

304-B:50. Issuance of Registration.

I. If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) Endorse on the application the word "filed", and the month, day and year of the filing thereof;

(b) File in his office a duplicate original of the application; and

(c) Issue a certificate of registration to transact business in this state.

II. The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.

III. The secretary of state shall not accept an application for registration unless accompanied by the certification required by RSA 421-B:13, I-a(b).

Source.

1987, 349:1, eff. Jan. 1, 1988.

References in text.

RSA 421-B:13, I-a, referred to in par. III, was repealed by 2001, 260:21, II, eff. July 13, 2001.

Cross References.

Fee for registration, see RSA 304-B:64.

304-B:51. Name.

The name of the foreign limited partnership shall satisfy the requirements of RSA 304-B:2.

Source.

1987, 349:1, eff. Jan. 1, 1988. 1996, 239:3, eff. Aug. 9, 1996. 1997, 61:6, eff. Jan. 1, 1998. 2004, 248:41, eff. July 1, 2004.

Amendments

—2004. Deleted "I(a) and II" following "RSA 304-B:2".

—1997. Added "I(a) and II" following "RSA 304-B:2".

—1996. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Reservation of names by partnerships generally, see RSA 304-B:3.

304-B:52. Changes and Amendments.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting such statement.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Fee for certificate, see RSA 304-B:64.

304-B:53. Cancellation of Registration.

A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the registered agent to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this state.

Source.

1987, 349:1, eff. Jan. 1, 1988. 2004, 248:42, eff. July 1, 2004.

Amendments

—2004. Substituted "registered agent" for "secretary of state" following "authority of the" in the second sentence.

Cross References.

Fee for certificate, see RSA 304-B:64.

304-B:54. Transaction of Business Without Registration.

I. A foreign limited partnership transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

II. The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

III. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.

IV. A foreign limited partnership transacting business in this state without registration may be served by registered or certified mail, return

receipt requested, addressed to the secretary of the foreign limited partnership at its principal office. Service is perfected under section at the earliest of:

(a) The date the foreign limited partnership receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign limited partnership; or

(c) Five days after its deposit in the United States Mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

V. This section does not prescribe the only means, or necessarily the required means, of serving a foreign limited partnership.

Source.

1987, 349:1, eff. Jan. 1, 1988. 2004, 248:43, eff. July 1, 2004.

Amendments

—2004. Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph V: Added.

304-B:55. Action by Attorney General.

The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this subdivision.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Derivative Actions

RESEARCH REFERENCES

New Hampshire Practice.

4 N.H.P. Civil Practice and Procedure § 6.04.

304-B:56. Right of Action.

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Cross References.

Recovery of expenses by plaintiff, see RSA 304-B:59.

304-B:57. Proper Plaintiff.

In a derivative action, the plaintiff must be a partner at the time of bringing the action and (a) must have been a partner at the time of the transaction of which he complains or (b) his status as a partner must have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:58. Pleading.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:59. Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

Source.

1987, 349:1, eff. Jan. 1, 1988.

Miscellaneous

304-B:60. Construction and Application.

This chapter shall be so applied and construed to effectuate its general purpose to make the law uniform with respect to the subject of this chapter among states enacting it.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:61. Short Title.

This chapter may be cited as the Uniform Limited Partnership Act.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:62. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Source.

1987, 349:1, eff. Jan. 1, 1988.

304-B:63. Rules for Cases Not Provided for in This Chapter.

In any case not provided for in this chapter the provisions of the Uniform Partnership Act, RSA 304-A, shall govern.

Source.
1987, 349:1, eff. Jan. 1, 1988.

NOTES TO DECISIONS

Cited:
Cited in *Currier v. Amerigas Propane, L.P.*, 144 N.H. 122, 737 A.2d 1118, 1999 N.H. LEXIS 82 (1999).

304-B:64. Fees.

- The secretary of state shall charge the following fees for filing under this chapter:
- I. For a certificate of limited partnership or registration as a foreign limited partnership, \$50.
 - II. For a certificate of amendment or correction, or a certificate of cancellation, \$35.
 - III. For a reservation or transfer of reservation of name, \$15.
 - IV. For a certificate of merger, \$35.

Source.
1987, 349:1. 1990, 3:23. 1993, 350:29, eff. July 1, 1993. 1997, 120:15, eff. Aug. 8, 1997. 2004, 248:44, eff. July 1, 2004.

- Amendments
- 2004. Paragraph I: Substituted “\$50” for “\$35”.
 - 1997. Paragraph IV: Added.
 - 1993. Paragraph I: Substituted “\$35” for “\$200”. Paragraph II: Substituted “\$35” for “\$50”.
 - 1990. Paragraph I: Substituted “\$200” for “\$100”. Paragraph II: Substituted “\$50” for “\$25”.

Severability
—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

Applicability of 1993.
1993, 350:43, I, eff. July 1, 1993, provided in part that this section “shall apply to returns and taxes and reports and fees due on account of taxable periods ending on or after July 1, 1993. In the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code [classified to 26 U.S.C.S. § 1 et seq.] and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993, for the purposes of this act [which amended this section and RSA 305-A:1].”

Collection of accrued fees.
1993, 350:35, eff. July 1, 1993, provided: “Nothing in this act [which amended this section and RSA 305-A:1] shall be construed to excuse any fee liabilities accruing under RSA 304-B or 305-A as amended prior to and up to the date of their repeal. The secretary of state shall retain full authority to institute any authorized administrative actions and any other proceedings to require payment of and to collect said fees and penalties and interest where applicable, within the applicable statute of limitations.”

CHAPTER 304-C

LIMITED LIABILITY COMPANIES

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- 304-C:75. Actions By and Against the Limited Liability Company.
 304-C:76. Right to Bring Action on Behalf of Limited Liability Company.
 304-C:77. Effect of Lack of Authority to Bring Action.

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- 304-C:78. Construction and Application of Chapter and Limited Liability Company Agreement.
 304-C:79. Cases not Provided for in This Chapter.
 304-C:80. Annual Report for Secretary of State.
 304-C:81. Fees.
 304-C:82. Administration.
 304-C:83. Rulemaking.
 304-C:84. Severability.
 304-C:85. Reserved Power of State of New Hampshire to Alter or Repeal Chapter.

Consumers' cooperative associations, generally, see RSA 301-A.

Cooperative marketing and rural electrification associations, generally, see RSA 301.

Corporate charters, generally, see RSA 293.

Exclusion of executive officers and members of limited liability company from workers' compensation coverage, see RSA 281-A:18-a.

General powers of corporations, see RSA 295.

New Hampshire Business Corporation Act, see RSA 293-A.

New Hampshire Investment Trusts, generally, see RSA 293-B.

Professional corporations, generally, see RSA 294-A.

Professional limited liability companies, see RSA 304-D.

Proprietors of common lands, generally, see RSA 303.

Taxation of corporation property, see RSA 73:3.

Uniform Limited Partnership Act, see RSA 304-B.

Uniform Partnership Act, see RSA 304-A.

Voluntary corporations and associations, generally, see RSA 292.

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article, "Of New Hampshire LLC's and the Continuity of Life," see 34 N.H.B.J. 19 (1993).

For note, "The Evolution of the Business Choice Entity: The Limited Liability Company Act," see 39 N.H. Bar Journal 38 (September 1998).

For article, "Legal Malpractice in LLC Formations," see 40 N.H. Bar Journal 14 (March 1999).

General Provisions**304-C:1. Definitions.**

As used in this chapter, unless the context otherwise requires:

I. "Bankruptcy" means an event that causes a person to cease to be a member as provided in RSA 304-C:27, I(d).

I-a. "Business entity" means a domestic or foreign limited liability company, corporation, general partnership, limited partnership or nondepository trust company organized under RSA 392 or RSA 392-A.

II. "Certificate of formation" means the certificate referred to in RSA 304-C:12, and the certificate as amended.

III. "Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, that a person contributes to a limited liability company in his capacity as a member.

IV. "Foreign limited liability company" means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

V. "Limited liability company" and "domestic limited liability company" mean a limited liability company formed under the laws of New Hampshire and having one or more members.

VI. "Limited liability company agreement" means a written agreement of the members or a document adopted by the sole member as to the

Cross References.

Business profits tax, see RSA 77-A.

affairs of a limited liability company and the conduct of its business. A limited liability company agreement or another written agreement or writing:

(a) May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the limited liability company agreement:

(1) If such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) executes the limited liability company agreement or any other writing evidencing the intent of such person to become a member or assignee; or

(2) Without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the limited liability company agreement or any other writing and requests, orally, in writing or by other action such as payment for a limited liability company interest, that the records of the limited liability company reflect such admission or assignment; and

(b) Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in subparagraph (a), or by reason of its having been signed by a representative as provided in this chapter.

VII. "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

VIII. "Liquidating trustee" means a person carrying out the winding up of a limited liability company.

IX. "Manager" means a person who is named as a manager of a limited liability company in or designated as a manager of a limited liability company pursuant to a limited liability company agreement or similar instrument under which the limited liability company is formed.

X. "Member" means a person who has been admitted to a limited liability company as a member as provided in RSA 304-C:23 or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

XI. "Person" means a natural person, partnership, whether general or limited and whether domestic or foreign, limited liability company, foreign limited liability company,

trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

XII. "Publicly traded limited liability company interest" means any limited liability company interest that is:

(a) Listed on a national securities exchange; or

(b) Authorized for quotation on an inter-dealer quotation system of a registered national securities association.

XIII. "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than the state of New Hampshire.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:16, 17, eff. Aug. 8, 1997. 2003, 65:4, eff. July 26, 2003.

Amendments

—2003. Paragraph I-a: Deleted "or" preceding "limited partnership" and added "or nondepository trust company organized under RSA 392 or RSA 392-A" thereafter.

—1997. Paragraph I-a: Added.

Paragraph V: Substituted "one or more" for "two or more".

Paragraph VI: Inserted "or a document adopted by the sole member" following "members" in the first sentence of the introductory paragraph.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Asset Protection Planning in New Hampshire," see 36 N.H.B.J. 5 (March 1995).

304-C:2. Filing Requirements.

I. A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

II. All required documents shall be filed in the office of the secretary of state.

III. The document shall contain the information required by this chapter. It may contain other information as well.

IV. The document shall be typewritten or printed.

V. The document shall be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals, and the statement of existence required of foreign limited liability companies need not be in English if accompanied by a reasonably authenticated English translation.

VI. Except as specifically provided in other sections of this chapter, the document shall be executed:

(a) By a manager of a limited liability company that has a manager;

(b) By a member of a limited liability company that does not have a manager;

(c) If the limited liability company is in the hands of a receiver, executor, or other court

appointed fiduciary, trustee, or other fiduciary, by that fiduciary.

VII. The person executing the document shall sign it and state beneath or opposite the person's signature his or her name and the capacity in which the person signs. Signature pursuant to 294-E:9 shall be sufficient to satisfy this requirement.

VIII. The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by one exact or conformed copy, the correct fee, and any penalty required by this chapter or other law. Documents filed electronically need not be accompanied by an exact or conformed copy, but must be accompanied by the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or other law. Annual reports delivered for filing pursuant to this chapter need not be accompanied by an exact or conformed copy.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:18, eff. Aug. 8, 1997. 2004, 248:45, eff. July 1, 2004.

Amendments

—2004. Paragraph VII: Substituted “the person's signature his or her name” for “his signature his name” and “the person signs” for “he signs” in the first sentence and added the second sentence.

Paragraph VIII: Added the second sentence.

—1997. Paragraph VI(c): Substituted “executor” for “trustee” following “receiver” and inserted “trustee, or other fiduciary” following “appointed fiduciary”.

Cross References.

Annual report, see RSA 304-C:80.

Effective time and date of documents accepted for filing, see RSA 304-C:11.

Filing certificate of formation, see RSA 304-C:15.

Filing fees, see RSA 304-C:81.

304-C:3. Name Set Forth in Certificate.

I. The name of each limited liability company as set forth in its certificate of formation:

(a) Shall contain the words “limited liability company” or the abbreviation “L.L.C.” or similar abbreviation; and

(b) May contain the name of a member or manager.

II. A limited liability company name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RSA 304-C:7 and its certificate of formation.

III. Except as authorized by paragraphs IV and V, a limited liability company name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(c) The fictitious name of another foreign corporation authorized to transact business in this state.

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(e) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

IV. A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in paragraph III, as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(a) The holder or holders of the name as described in paragraph III gives written consent to use the name that is not distinguishable from, or likely to be confused with or mistaken for the name of the applying limited liability company; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(b) The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying limited liability company; or

(c) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

V. A limited liability company may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user limited liability company:

(a) Has merged with the other entity;

(b) Has been formed by reorganization of the other entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other entity.

VI. This chapter does not control the use of fictitious names.

VII. Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a domestic limited liability company under the same name as the trade name.

Source.

1993, 313:1, eff. July 1, 1993. 1999, 293:6, eff. July 16, 1999. 2004, 248:46, eff. July 1, 2004.

Amendments

—**2004.** Rewritten to the extent that a detailed comparison would be impracticable.

—**1999.** Paragraph III: Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Trade names, see RSA 349:1 et seq.

304-C:4. Reservation of Name.

I. The exclusive right to the use of a name may be reserved by:

(a) Any person intending to organize a limited liability company under this chapter and to adopt that name;

(b) Any domestic limited liability company or any foreign limited liability company registered in New Hampshire which, in either case, proposes to change its name to that name;

(c) Any foreign limited liability company intending to register in New Hampshire and adopt that name; or

(d) Any person intending to organize a foreign limited liability company and intending to have it register in New Hampshire and adopt that name.

II. The reservation of a specified name shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with the secretary of state a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Filing fees, see RSA 304-C:81.

Filing requirements generally, see RSA 304-C:2.

304-C:5. Registered Office; Registered Agent.

I. Each limited liability company shall have and maintain in New Hampshire:

(a) A registered office that may be the same as any of its places of business; and

(b) A registered agent, which agent may be:

(1) An individual who resides in this state and whose business office is identical with the registered office; or

(2) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose business office is identical with the registered office; or

(3) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or

(4) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

II. A limited liability company may change its registered office or registered agent, or both, by filing with the secretary of state a statement setting forth:

(a) The name of the limited liability company;

(b) The street address of its current registered office;

(c) If the street address of its registered office is to be changed, the street address to which the registered office is to be changed;

(d) The name and address of its current registered agent;

(e) If its registered agent is to be changed, the name and address of its successor registered agent; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

III. A registered agent of a limited liability company may resign as registered agent by executing and filing a written notice of resignation with the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its principal office. The appointment of the registered agent terminates 31 days after filing of the notice with the secretary of state or on the appointment of a successor registered agent, whichever occurs first. The notice of resignation may include a statement that the registered office is also discontinued.

IV. If a registered agent changes its address to another place in this state, it may change the address of the registered office of any limited liability company for which it is a registered agent by filing a statement with the secretary of state as required by RSA 304-C:5, II, except that the statement need be signed only by the registered agent. The statement shall recite that a copy of it has been mailed to the limited liability company.

Source.

1993, 313:1, eff. July 1, 1993. 2004, 248:47, eff. July 1, 2004.

Amendments

—2004. Paragraph I(b): Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Filing fees, see RSA 304-C:81.

304-C:6. Service of Process on Domestic Limited Liability Companies.

I. A limited liability company's registered agent is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

II. If a limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, the limited liability company may be served by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office. Service is perfected under this section at the earliest of:

(a) The date the limited liability company receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the limited liability company; or

(c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

III. This section does not prescribe the only means, or necessarily the required means, of serving a limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Service of process on managers and liquidating trustees or secretary of state as resident agent, see RSA 304-C:10.

304-C:7. Nature of Business Permitted; Powers.

I. A limited liability company may be organized under this chapter for any lawful purpose except carrying on the business of banking, the construction and maintenance of railroads, the business of making contracts for the payment of money at a fixed date or upon the happening of some contingency, or the business of a trust, surety, indemnity or safe deposit company. If, however, the commissioner of the department of transportation enters an order finding that it shall be in the public good and subject to such terms and conditions as he may prescribe in the public interest, a limited liability company may be formed pursuant to this chapter to acquire, maintain, and operate any existing line or railroad or street railway within this state.

II. Except as provided in a limited liability company agreement, every limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

(a) To sue and be sued, complain and defend in its name.

(b) To have a seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

(c) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

(d) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

(e) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in or with shares or other interests in, or obligations of, any other entity.

(f) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the limited liability company), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

(g) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

(h) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

(i) To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

(j) To appoint employees and agents, define their duties, fix their compensation, and lend them money and credit.

(k) To pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former managers, employees, and agents.

(l) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(m) To transact any lawful business that will aid governmental policy.

(n) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the limited liability company.

III. No act of a limited liability company and no conveyance or transfer of real or personal property to or by a limited liability company shall be invalid because the limited liability company was without capacity or power to do the act or to make or receive the conveyance or transfer, but the lack of capacity or power may be asserted:

(a) In a proceeding by a member against a limited liability company to enjoin the doing of any act or the transfer of real or personal

property by or to the limited liability company. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made under a contract to which the limited liability company is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of the contract, and in so doing may allow to the limited liability company or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract. Anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the limited liability company, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former managers or members of the limited liability company.

(c) In a proceeding by the attorney general, as provided in this chapter to dissolve the limited liability company, or in a proceeding by the attorney general to enjoin the limited liability company from the transaction of unauthorized business.

Source.

1993, 313:1, eff. July 1, 1993. 1994, 19:1, eff. June 21, 1994.

Amendments

—1994. Paragraph III: Added.

Cross References.

Foreign electric utility powers, see RSA 374-A:3.

304-C:8. Business Transactions of Member or Manager With the Limited Liability Company.

Except as provided in a limited liability company agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guaranty or assume one or more specific obligations of, provide collateral for, and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:9. Indemnification.

I. Except as provided in paragraph II and subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify any member or manager or other person made a party to a proceeding or threatened to be made

a named defendant or respondent in a proceeding because such member, manager, or other person acted on behalf of the limited liability company, against liability for a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding, if:

(a) The member, manager or person conducted himself in good faith; and

(b) The member, manager, or person reasonably believed his conduct was not opposed to the best interest of the limited liability company.

II. A limited liability company may not indemnify a member, manager, or other person under this section:

(a) In connection with a proceeding by or in the right of the limited liability company in which such person was judged liable to the limited liability company; or

(b) In connection with any other proceeding charging improper personal benefit to such person, whether or not involving action on behalf of the limited liability company, in which such person was adjudged liable on the basis that personal benefit was improperly received by him.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Actions by and against limited liability companies generally, see RSA 304-C:75 et seq.

Immunity of members and managers from liability to third parties, see RSA 304-C:25.

Protection of member or manager for reliance on reports and information, see RSA 304-C:35.

304-C:10. Service of Process on Managers and Liquidating Trustees.

I. A manager or a liquidating trustee of a limited liability company may be served with process in the manner prescribed in this section in all civil actions or proceedings brought in New Hampshire involving or relating to the business of the limited liability company or a violation by the manager or the liquidating trustee of a duty to the limited liability company, or any member of the limited liability company, whether or not the manager or the liquidating trustee is a manager or a liquidating trustee at the time suit is commenced. A manager's or a liquidating trustee's serving as such constitutes such person's consent to the appointment of the registered agent of the limited liability company, or, if there is none, the secretary of state, as such person's agent upon whom service of process may be made as provided in this section. Such service as a manager or a liquidating trustee shall signify the consent of such manager or liquidating trustee that any process when so served shall be of the same legal force and validity as if served upon such

manager or liquidating trustee within New Hampshire, and such appointment of the registered agent, or, if there is none, the secretary of state, shall be irrevocable.

II. Service of process under this section may be effected in the manner provided in RSA 304-C:6.

III. In a written limited liability company agreement or other writing, a manager or member may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of, or the exclusivity of arbitration in, New Hampshire, and to be served with legal process in the same manner prescribed in such limited liability company agreement or other writing.

IV. This section does not prescribe the only means, or necessarily the required means, of serving managers and liquidating trustees of limited liability companies.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Fee for service of process upon secretary of state as resident agent, see RSA 304-C:81.

Trustee process, return of service, see RSA 510:17.

304-C:11. Effective Time and Date of Document.

I. Except as provided in paragraph II, a document accepted for filing is effective:

(a) At the close of business on the date it is filed, as evidenced by the secretary of state's date endorsement of the original document; or

(b) At the time specified in the document as its effective time on the date it is filed; or

(c) Upon the date and time of acceptance by the secretary of state corporate database and application, if filed electronically.

II. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

Source.

1993, 313:1, eff. July 1, 1993. 2004, 248:48, eff. July 1, 2004.

Amendments

—2004. Paragraph I: Made a minor stylistic change in subpar. (b) and added subpar. (c).

Cross References.

Filing requirements generally, see RSA 304-C:2.

Formation; Certificate of Formation

Cross References.

Dissolution generally, see RSA 304-C:50 et seq.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Of New Hampshire LLC's and the Continuity of Life," see 34 N.H.B.J. 19 (1993).

304-C:12. Certificate of Formation.

I. In order to form a limited liability company, one or more authorized persons shall deliver a certificate of formation and the certificate required by RSA 421-B:13, I-a to the secretary of state for filing.

II. The certificate of formation shall set forth:

(a) The name of the limited liability company;

(b) The nature of the primary business or purposes of the limited liability company;

(c) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by RSA 304-C:5;

(d) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve;

(e) If management of the limited liability company is vested in a manager or managers, a statement to that effect; and

(f) Any other matters the members decide to include.

III. A limited liability company is formed at the time of the filing of the initial certificate of formation with the secretary of state.

IV. A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

Source.

1993, 313:1, eff. July 1, 1993.

References in text.

RSA 421-B:13, I-a, referred to in par. I, was repealed by 2001, 260:21, II, eff. July 13, 2001.

Cross References.

Filing fees, see RSA 304-C:81.

304-C:13. Amendment to Certificate of Formation.

I. A certificate of formation is amended by filing a certificate of amendment with the secretary of state. The certificate of amendment shall set forth:

(a) The name of the limited liability company; and

(b) The amendment to the certificate of formation.

II. A certificate of formation may be amended at any time in any respect so long as the certificate of formation as amended contains only provisions that lawfully may be contained

in the certificate of formation at the time of making the amendment.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Filing fees, see RSA 304-C:81.

Notice of reinstatement as amendment to certificate of formation, see RSA 304-C:54.

304-C:14. Execution, Amendment or Cancellation by Judicial Order.

I. If a person required to execute a certificate required by this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior court to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate or enter an order granting other appropriate relief.

II. If a person required to execute a limited liability company agreement or amendment of such an agreement fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior court to direct the execution of the limited liability company agreement or amendment of such agreement. If the court finds that the limited liability company agreement or amendment of such an agreement should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall order such person to execute such agreement or amendment or enter an order granting other appropriate relief.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:15. Filing.

I. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all required filing fees the secretary shall:

(a) Certify that the certificate of formation, amendment, or cancellation, any judicial decree of amendment or cancellation, the certificate of merger, or the restated certificate has been filed by endorsing upon the original certificate the word "filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) File the endorsed certificate; and

(c) Prepare and return to the person who filed it, or such person's representative, a copy of the original signed instrument, similarly endorsed.

II. Upon the filing of a certificate of amendment, or judicial decree of amendment, or restated certificate with the secretary of state, or

upon the future effective date or time of a certificate of amendment, or judicial decree of amendment, or restated certificate, the certificate of formation shall be amended or restated as set forth. Upon the filing of a certificate of cancellation, or a judicial decree thereof, or a certificate of merger for any limited liability company as to which it acts as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation or a judicial decree thereof, or of a certificate of merger for any limited liability company as to which it acts as a certificate of cancellation, the certificate of formation is cancelled.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Effective time and date of documents accepted for filing, see RSA 304-C:11.

Filing fees, see RSA 304-C:81.

Filing requirements generally, see RSA 304-C:2.

304-C:16. Notice.

The fact that a certificate of formation is on file with the secretary of state is notice that the entity formed in connection with the filing of the certificate of formation is a limited liability company legally formed under the laws of New Hampshire and is notice of all other facts set forth in the certificate which are required to be set forth by RSA 304-C:12, II(a), (b) and (c).

Source.

1993, 313:1, eff. July 1, 1993.

304-C:17. Restated Certificate.

I. A certificate of formation may be restated at any time by filing a restated certificate of formation with the secretary of state. The restated certificate of formation may contain one or more amendments of the certificate of formation as permitted in a certificate of amendment under RSA 304-C:13.

II. The restated certificate of formation shall state the name of the limited liability company and the text of the restated certificate of formation together with a statement whether the restatement contains new amendments of the certificate of formation.

III. Upon the filing of a restated certificate of formation with the secretary of state, or upon the future effective date or time of a restated certificate of formation as provided in the certificate, the initial certificate of formation, as amended or supplemented, shall be superseded. The restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Effective time and date of documents accepted for filing, see RSA 304-C:11.

Filing fees, see RSA 304-C:81.

Merger and Conversion**Amendments**

—1997. 1997, 120:19, eff. Aug. 8, 1997, added “and Conversion” following “Merger” in the subdivision heading.

Cross References.

Distribution upon dissociation or merger, see RSA 304-C:41.

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article, “Of New Hampshire LLC’s and the Continuity of Life,” see 34 N.H.B.J. 19 (1993).

304-C:17-a. Conversion of Other Business Entities to Limited Liability Companies.

I. Any business entity may convert to a limited liability company by complying with the requirements of this section.

II. Each business entity that proposes to convert to a limited liability company shall approve a plan of conversion in the manner and by the vote required by the laws applicable to such business entity.

III. A plan of conversion shall set forth the terms and conditions of the conversion of the shares of stock of a corporation, the partnership interests of a partnership or a limited partnership or other equity interests in the converting business entity, as the case may be, into interests in the limited liability company or cash or other consideration to be paid or delivered as a result of the conversion.

IV. A business entity converting to a limited liability company shall file with the secretary of state:

(a) A certificate of conversion to a limited liability company;

(b) A certificate of formation that complies with the requirements of RSA 304-C:12; and

(c) The certificate required by RSA 421-B:11, II.

V. The certificate of conversion to a limited liability company shall state:

(a) The date on which and jurisdiction where the business entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a limited liability company.

(b) The name of the business entity immediately prior to the filing of the certificate of conversion to a limited liability company.

(c) The name of the limited liability company as set forth in its certificate of formation filed in accordance with paragraph IV of this section.

(d) If the business entity is a corporation:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan; and

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group is sufficient for approval by that voting group.

(e) That the plan of conversion is on file at the principal place of business of the limited liability company and the address thereof and that a copy of the plan of conversion will be furnished by the limited liability company, on request and without cost, to any shareholder of the corporation.

VI. A conversion of a business entity to a limited liability company takes effect upon the effective date and time of the certificate of formation.

VII. Upon the effective date of the conversion the converting business entity shall be converted into a limited liability company, and the limited liability company shall thereafter be subject to all of the provisions of this chapter.

VIII. A conversion of a business entity to a limited liability company has the following effects:

(a) The limited liability company shall thereupon and thereafter possess all the rights, privileges, immunities, and powers of the business entity that converted into the limited liability company and shall be subject to all the restrictions, disabilities, and duties of such business entity to the extent that such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to a limited liability company.

(b) All property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest of or belonging to or due to such business entity shall be vested in the limited liability company without further act or deed.

(c) The title to all real estate and other interests therein vested in the business entity converting into the limited liability company shall not revert or be in any way impaired by reason of such conversion.

(d) The limited liability company shall thenceforth be liable for all liabilities and obligations of the business entity converting to the limited liability company and any claim existing or action or proceeding pending by or against such business entity may be prosecuted as if such conversion had not taken place, or the limited liability company may be substituted in the action.

(e) Neither the rights of creditors nor any liens on the property of the business entity

converted to a limited liability company shall be impaired by the conversion.

(f) The interests or shares of the business entity that is converted into a limited liability company that are to be converted or exchanged into interests of the limited liability company under the terms of the plan of conversion are so converted, and the former holders thereof are entitled only to the interests in the limited liability company as provided in the plan of conversion or the rights otherwise provided by law.

(g) The conversion shall not be deemed to affect any obligations or liabilities of the converting business entity incurred before its conversion to a limited liability company.

IX. Unless otherwise agreed or as required under applicable law, the converting business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting business entity.

Source.

1997, 120:20, eff. Aug. 8, 1997.

304-C:17-b. Approval of Conversion of a Limited Liability Company.

I. A limited liability company may convert to another business entity authorized by applicable statute to be formed by conversion of a limited liability company, upon the authorization of such conversion in accordance with this section and fulfillment of the requirements for conversion of the statute governing conversion into such other entity.

II. If the limited liability company agreement specifies the manner of authorizing a conversion of the limited liability company, the conversion shall be authorized as specified in the limited liability company agreement. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company and does not prohibit a conversion of the limited liability company, the conversion shall be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger that involves the limited liability company as a constituent party to the merger.

III. If the limited liability company agreement does not specify the manner of authorizing a conversion of the limited liability company or a merger that involves the limited liability company as a constituent party and does not prohibit a conversion of the limited liability company, the conversion shall be authorized by the approval by more than $\frac{1}{2}$ by number of the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by a more than $\frac{1}{2}$ by

number of the members in each class or group, as appropriate.

Source.

1997, 120:20, eff. Aug. 8, 1997.

304-C:18. Merger.

I. Unless otherwise provided in writing in a limited liability company agreement, and subject to any law applicable to business entities other than limited liability companies, one or more limited liability companies may merge with or into one or more other business entities authorized by applicable statute to merge with a limited liability company, with the limited liability company or other business entity, as the merger agreement shall provide, being the surviving limited liability company or other business entity.

II. Rights or securities of or interests in a business entity that is a party to the merger may be exchanged for or converted into cash, property, obligations, rights or securities of or interests in the surviving business entity or of any other business entity.

III. [Repealed.]

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:21, 42, eff. Aug. 8, 1997.

Amendments

—1997. Paragraph I: Inserted “authorized by applicable statute to merge with a limited liability company” following “other business entities”.

Paragraph III: Repealed.

304-C:19. Approval of Merger.

I. Unless otherwise provided in a limited liability company agreement, a limited liability company that is a party to a proposed merger shall approve the merger agreement by the consent of more than $\frac{1}{2}$ by number of the members, or if there is more than one class or group of members, then by the consent of more than $\frac{1}{2}$ by number of the members of each class or group of members.

II. Each corporation, general partnership, limited partnership and foreign limited liability company that is a party to a proposed merger to be made pursuant to RSA 304-C:18 shall approve the merger in the manner and by the vote required by the laws applicable to such business entity.

III. Each business entity that is a party to the merger shall have such rights to abandon the merger as are provided for in the merger agreement or in the laws applicable to the business entity.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:22, eff. Aug. 8, 1997.

Amendments

—1997. Paragraph I: Rewritten to the extent that a detailed comparison would be impracticable.

304-C:20. Agreement of Merger.

I. Each business entity that is a party to the merger shall enter into a written agreement of merger, which shall be approved in accordance with RSA 304-C:19.

II. The agreement of merger shall set forth:

(a) The name of each business entity that is a party to the merger and the name of the surviving business entity into which each other business entity merges;

(b) The terms and conditions of the merger;

(c) The manner and basis of converting the interests in each limited liability company and the shares of stock or other interests in each corporation, general partnership or limited partnership that is a party to the merger into interests, shares, or other securities or obligations, as the case may be, of the surviving business entity, or of any other business entity, or, in whole or in part, into cash or other property;

(d) Such amendments to the certificate of formation of a limited liability company, or articles of incorporation of a corporation, or certificate of limited partnership of a limited partnership or the partnership agreement of a general partnership or a limited partnership, as the case may be, of the surviving business entity that are to be effected by the merger, or that no such changes are to be effected; and

(e) Such other provisions relating to the merger as are deemed necessary or desirable.

III. An agreement of merger approved in accordance with RSA 304-C:19 may effect any amendment to a limited liability company agreement for a limited liability company if it is the surviving limited liability company in the merger. An approved agreement of merger may also provide that the limited liability company agreement of any constituent limited liability company to the merger (including a limited liability company formed for the purpose of consummating a merger) shall be the limited liability company agreement of the surviving limited liability company. Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to this paragraph shall be effective at the effective time or date of the merger. The provisions of this paragraph shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:21. Certificate of Merger.

I. The business entity surviving from the merger shall deliver to the secretary of state a

certificate of merger executed by each constituent entity setting forth:

(a) The name and jurisdiction of formation or organization of each business entity which is to merge;

(b) That an agreement of merger has been approved and executed by each business entity which is a party to the merger;

(c) The name of the surviving business entity;

(d) To the extent permitted by RSA 304-C:11 the future effective date and time of the merger (which shall be a date or time certain) if it is not to be effective at the close of business on the date of filing of the certificate of merger;

(e) That the agreement of merger is on file at a place of business of the surviving business entity, and the address of that place of business;

(f) That a copy of the agreement of merger will be furnished by the surviving business entity, on request and without cost, to any person holding an interest in any business entity which is to merge; and

(g) If the surviving entity is not a business entity organized under the laws of this state, a statement that such surviving business entity:

(1) Agrees that it may be served with process in this state in any proceeding for enforcement of any obligation of any business entity party to the merger that was organized under the laws of this state, as well as for enforcement of any obligation of the surviving business entity arising from the merger; and

(2) Appoints the secretary of state as its agent for service of process in any such proceeding, and the surviving business entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

II. A merger takes effect upon the later of the effective date of the filing of the certificate of merger or the date set forth in the certificate of merger.

III. The certificate of merger shall be executed by a limited liability company that is a party to the merger in the manner provided for in RSA 304-C:2 and shall be filed with the secretary of state in the manner provided for in RSA 304-C:2.

IV. A certificate of merger shall constitute a certificate of cancellation for a limited liability company which is not the surviving business entity in the merger.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Certificate of cancellation generally, see RSA 304-C:59.
Filing fees, see RSA 304-C:81.

304-C:22. Effects of Merger.

A merger has the following effects:

I. The business entities that are parties to the merger agreement shall be a single entity, which shall be the entity designated in the plan

of merger as the surviving entity;

II. Each party to the merger agreement, except the surviving entity, shall cease to exist;

III. The surviving entity shall thereupon and thereafter possess all the rights, privileges, immunities, and powers of each constituent entity and shall be subject to all the restrictions, disabilities, and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to the type of business entity that is the surviving entity;

IV. All property, real, personal and mixed, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity without further act or deed;

V. The title to all real estate and any interest therein, vested in any such constituent entity shall not revert or be in any way impaired by reason of such merger;

VI. The surviving entity shall thenceforth be liable for all liabilities and obligations of each of the constituent entities so merged, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger had not taken place, or the surviving entity may be substituted in the action;

VII. Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger; and

VIII. The interests in a limited liability company or shares or other interests in a corporation, general partnership or limited partnership that are to be converted or exchanged into interests, shares or other securities, cash, obligations or other property under the terms of the merger agreement are so converted, and the former holders thereof are entitled only to the rights provided in the merger agreement or the rights otherwise provided by law.

Source.

1993, 313:1, eff. July 1, 1993.

Dissenters' Rights

304-C:22-a. Definitions and Construction.

In this subdivision:

I. "Dissenter" means a member who is entitled to dissent from limited liability company action under RSA 304-C:22-b and who exercises that right when and in the manner required under this subdivision.

II. "Fair value" means the value of the dissenter's limited liability interest of a limited liability company immediately before the effective date of the limited liability action referred

to in RSA 304-C:22-b, excluding any appreciation or depreciation in anticipation of the limited liability action.

III. "Interest" means interest from the effective date of the action referred to in RSA 304-C:22-b that gave rise to the member's right to dissent until the date of payment, at the average auction rate paid on United States treasury bills with a maturity of 6 months (or the closest maturity thereto) as of the auction date for such treasury bills closest to such effective date.

IV. "Limited liability company" means a limited liability company whose members have obtained rights to dissent under RSA 304-C:22-b, and includes any successor by merger or conversion.

V. "Member" includes a former member who has ceased to be a member, but who was not entitled to payment for the value of the member's limited liability interest upon cessation of membership.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-b. Dissenters' Rights.

I. A member of a limited liability company is entitled to dissent from, and obtain payment of, the fair value of the member's limited liability company interest, upon any of the following actions:

(a) Consummation of a plan of merger to which the limited liability company is a party.

(b) Consummation of a plan of conversion of the limited liability company to some other business entity.

(c) An amendment to the limited liability company agreement (1) altering or abolishing a right in respect of distribution, (2) altering or abolishing a right to voluntarily withdraw, or (3) altering or abolishing any right of a member to vote on any matter, other than alteration by dilution through the admission of other members or acceptance of contributions.

II. A member entitled to dissent and obtain payment for such member's limited liability company interest under this subdivision may not challenge the limited liability company action creating such member's entitlement unless the action is unlawful or fraudulent with respect to the member or the limited liability company.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-c. Notice of Dissenters' Rights.

I. If the proposed action of the limited liability company creating dissenters' rights under RSA 304-C:22-b is submitted to a vote at a meeting of the members, the meeting notice must state that members are or may be entitled to assert dissenters' rights under this subdivi-

sion and be accompanied by a copy of this subdivision.

II. If the limited liability company action creating dissenters' rights under RSA 304-C:22-b is taken without a vote of the members, the limited liability company shall notify in writing all members entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in RSA 304-C:22-e.

III. A limited liability company's failure to give notice pursuant to this section shall not invalidate the limited liability company action.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-d. Notice of Intent to Demand Payment.

I. If proposed action of a limited liability company creating dissenters' rights under RSA 304-C:22-b is submitted to a vote at a meeting of the members, a member who wishes to assert dissenters' rights shall:

(a) Deliver to the limited liability company before the vote is taken a written notice of the member's intent to demand payment for the member's limited liability company interest if the proposed action is effectuated.

(b) Not vote the member's limited liability company interest in favor of the proposed action.

II. No such written notice of intent to demand payment is required of any member to whom the limited liability company has failed to provide the notice required by RSA 304-C:22-c.

III. A member who does not satisfy the requirements of this section is not entitled to payment for such member's limited liability company interest under this subdivision.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-e. Dissenters' Notice.

I. If proposed action of a limited liability company creating dissenters' rights under RSA 304-C:22-b is authorized at a meeting of the members, the limited liability company shall deliver a written dissenters' notice to all members who have satisfied the requirements of RSA 304-C:22-d.

II. The dissenters' notice must be sent no later than 10 days after the action of the limited liability company was authorized by the members or effectuated, whichever is the first to occur, and shall:

(a) State where the payment demand shall be sent;

(b) Supply a form for demanding payment that includes the date of the first announcement to news media or to members of the principal terms of the proposed limited liability company

action and requires that the person asserting dissenters' rights certify whether or not the member acquired limited liability company interest before that date;

(c) Set a date by which the limited liability company must receive the payment demand, which date may not be fewer than 30 days and not more than 60 days after the date of the notice required by paragraph II is sent; and

(d) Be accompanied by a copy of this subdivision if the limited liability company has not previously sent a copy of this subdivision to the member pursuant to RSA 304-C:22-c.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-f. Duty to Demand Payment.

I. A member sent a dissenters' notice described in RSA 304-C:22-e must demand payment and certify whether the member acquired the limited liability company interest before the date required to be set forth in the dissenters' notice pursuant to RSA 304-C:22-e.

II. A member who demands payment under paragraph I retains all of the rights of a member until those rights are canceled or modified by consummation of the proposed action of the limited liability company.

III. A member who does not demand payment by the date set forth in the dissenters' notice is not entitled to payment of fair value for such member's membership interest under this subdivision.

IV. A demand for payment filed by a member may not be withdrawn unless the limited liability company with which it was filed or the surviving limited liability company or other business entity consents to such withdrawal.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-g. Payment.

I. Except as provided in RSA 304-C:22-i, as soon as the proposed limited liability company action is effectuated, or upon receipt of a payment demand, whichever is later, the limited liability company shall pay each dissenter who complied with RSA 304-C:22-f the amount the limited liability company estimates to be the fair value of such dissenter's membership interest, plus accrued interest.

II. The payment must be accompanied by:

(a) The limited liability company's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, and the latest available interim financial statements, if any;

(b) A statement of the limited liability company's estimate of the fair value of the membership interest;

(c) An explanation of how the value of the membership interest was calculated;

(d) A statement of the dissenter's right to demand payment under RSA 304-C:22-j; and

(e) A copy of this subdivision, if the limited liability company has not previously sent a copy of this subdivision to the member pursuant to RSA 304-C:22-c or RSA 304-C:22-e.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-h. Failure to Take Action.

If the limited liability company does not effectuate the proposed action that gave rise to the dissenters' rights within 60 days after the date set for demanding payment, it shall send a new dissenters' notice under RSA 304-C:22-c and repeat the payment demand procedure if it effectuates the proposed action.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-i. After-Acquired Limited Liability Company Interests.

I. A limited liability company may elect to withhold payment required by RSA 304-C:22-g from a dissenter unless the dissenter was a member before the date set forth in the dissenters' notice as the date of the first announcement to news media or to members of the principal terms of the proposed limited liability company action.

II. To the extent the limited liability company elects not to withhold payment under paragraph I, after effectuating the proposed limited liability company action, it shall estimate the fair value of the limited liability company interest, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The limited liability company shall send with its offer a statement of its estimate of the fair value of the limited liability company interest, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RSA 304-C:22-j.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-j. Procedure if Member Dissatisfied With Payment or Offer.

I. A dissenter may notify the limited liability company in writing of the dissenter's own estimate of the fair value of such dissenter's limited liability company interest and amount of interest due, and demand payment of the dissenter's estimate (less any payment under RSA 304-C:22-g), or reject the limited liability company's offer under RSA 304-C:22-i and demand payment of the fair value of the limited liability

company interest and interest due, if:

(a) The dissenter believes that the amount paid under RSA 304-C:22-g or offered under RSA 304-C:22-i is less than the fair value of such dissenter's limited liability company interest or that the interest due is incorrectly calculated; or

(b) The limited liability company fails to make payment under RSA 304-C:22-g within 60 days after the date set for demanding payment.

II. A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited liability company of such dissenter's demand in writing under paragraph I within 30 days after the limited liability company made or offered payment for such dissenter's limited liability company interest.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-k. Court Action.

I. If a demand for payment under RSA 304-C:22-j remains unsettled, the limited liability company shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the limited liability company interest and accrued interest. If the limited liability company does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

II. The limited liability company shall commence the proceeding in superior court of the county where the limited liability company's principal executive office (or, if none in this state, its registered office) is located. If the limited liability company is a foreign entity without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic limited liability company merged or converted into with the foreign limited liability company was located.

III. The limited liability company shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their limited liability company interests, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

IV. The jurisdiction of the court in which the proceeding is commenced under paragraph II is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

V. Each dissenter made a party to the proceeding is entitled to judgment:

(a) For the amount, if any, by which the court finds the fair value of the dissenter's membership interest plus accrued interest exceeds the amount paid by the limited liability company; or

(b) For the fair value, plus accrued interest, of such dissenter's after-acquired membership interest for which the limited liability company elected to withhold payment under RSA 304-C:22-i.

VI. The limited liability company is entitled to judgment against each specific dissenter for the amount, if any, by which the court finds the fair value of such dissenter's membership interest, plus accrued interest, is less than the amount paid by the limited liability company to each dissenter.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-l. Court Costs and Counsel Fees.

I. The court in an appraisal proceeding commenced under RSA 304-C:22-k shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under RSA 304-C:22-j.

II. The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited liability company and in favor of any or all dissenters if the court finds the limited liability company did not substantially comply with the requirements of RSA 304-C:22-b through RSA 304-C:22-j.

(b) Against either the limited liability company or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subdivision.

III. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the limited liability company, the court may award to these counsel reasonable fees to be paid out of the amount awarded to the dissenters who were benefited.

Source.

1997, 120:23, eff. Aug. 8, 1997.

304-C:22-m. Procedures as to Assignees of Financial Rights.

I. When an assignment of all or a portion of limited liability company interest is in effect and a copy is delivered to the limited liability company prior to the action described in RSA 304-C:22-g, then as to that limited liability company interest the provisions of RSA 304-C:22-a through RSA 304-C:22-l must be followed subject to the requirements of this section.

II. If the member has not ceased to be a member pursuant to RSA 304-C:46, II(b) prior to the action described in RSA 304-C:22-g, all rights to be exercised and actions to be taken by a member under RSA 304-C:22-b through RSA 304-C:22-l shall be taken by the member and not by an assignee of the member's limited liability company interest. As between the limited liability company and the assignees, the actions taken or omitted by the member bind the assignees, and the following requirements shall apply:

(a) Instead of remitting a payment under RSA 304-C:22-g, the limited liability company shall forward to the dissenter member:

(1) The materials described in RSA 304-C:22-g, II;

(2) An offer to pay the amount listed in the materials, with that amount to be allocated among and paid to the member and the assignees of the limited liability company interest according to the terms in of the assignment reflected in the required records; and

(3) A statement of that allocation.

(b) If the dissenter member accepts the amount of the offer made under subparagraph (a) but disputes the allocation, the dissenter shall promptly so notify the limited liability company and within 60 days after the notification commence a proceeding and petition the court to determine the proper allocation. The member shall commence the proceeding in superior court of the county in which the principal office of the limited liability company (or if none, its registered office) is located, or in the case of a surviving foreign limited liability company or other entity that is complying with this section following a merger with or conversion of a limited liability company, the member shall commence the proceeding in superior court of the county in this state in which the last registered office of the limited liability company was located. The petition shall name as parties the member, the limited liability company and all assignees of the member's limited liability interest. Upon being served with the petition, the limited liability company shall promptly pay into the court the amount offered under paragraph II and shall then be dismissed from the proceeding.

(c) If the dissenter considers the amount offered under subparagraph (a) inadequate, the dissenter may decline the offer and demand payment under RSA 304-C:22-j. If the dissenter makes demand for payment, RSA 304-C:22-k and RSA 304-C:22-l apply with the court having jurisdiction also to determine the correctness of the allocation.

(d) If the member fails to act under either subparagraph (b) or (c), then:

(1) As to the limited liability company, both the member and the assignees of the member's limited liability company interests are limited to the amount and allocation offered under subparagraph (a); and

(2) The limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under subparagraph (a).

III. If the member has ceased to be a member upon assignment of his limited liability company interest pursuant to RSA 304-C:46, II(b), the assignees of the member's limited liability company interest shall be entitled to exercise all rights of the member pursuant to RSA 304-C:22-b through RSA 304-C:22-l.

Source.

1997, 120:23, eff. Aug. 8, 1997.

Members and Managers

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article "Of New Hampshire LLC's and the Continuity of Life," see 34 N.H.B.J. 19 (1993).

304-C:23. Admission of Members.

I. In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

(a) The formation of the limited liability company; or

(b) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

II. After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members and when

the person's admission is reflected in the records of the limited liability company;

(b) In the case of an assignee of a limited liability company interest, as provided in RSA 304-C:46, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company; or

(c) In the case of an assignee of a single-member limited liability company interest, upon such assignee's succeeding to the assignor's limited liability company interest under RSA 304-C:48, I(c), without further action.

III. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:24, eff. Aug. 8, 1997.

Amendments

—1997. Paragraph II: Added subpar. (c) and made other minor stylistic changes.

Cross References.

Form of contributions of members, see RSA 304-C:36.

304-C:24. Classes, Meetings, and Voting of Members.

I. A limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as the limited liability company agreement may provide and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members.

II. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

III. A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis.

IV. A limited liability company agreement that grants a right to vote may set forth provi-

sions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

V. Unless otherwise provided in a limited liability company agreement or this chapter, and subject to paragraph VI, the affirmative vote, approval or consent of more than $\frac{1}{2}$ by number of the members, if management of the limited liability company is vested in the members, shall be required to decide any matter connected with the business of the limited liability company.

VI. Unless otherwise provided in a limited liability company agreement, the affirmative vote, approval or consent of all members shall be required to:

(a) Amend a limited liability company agreement; or

(b) Authorize a manager or member to do any act on behalf of the limited liability company that contravenes a limited liability company agreement, including any provision that expressly limits the purpose, business or affairs of the limited liability company or the conduct of such limited liability company.

VII. Unless otherwise provided by law or in a limited liability company agreement or certificate of formation, no meeting is required for any decision or action of members or managers of a limited liability company.

VIII. For a limited liability company in which management is vested in fewer than all the members, there shall be, within 30 days of a written demand by any member, a meeting of the members to consider the affairs of the limited liability company, and to take any action permitted to be taken by the members by law, the limited liability company agreement, or the certificate of formation, unless there has been such a meeting within 240 days prior to delivery of the demand.

(a) The meeting may be held in person or wholly or partly by any substantially simultaneous means or telecommunications or by unanimous written waiver or consent of the members.

(b) Members may participate in person or by proxy.

(c) Unless otherwise provided in the limited liability company agreement or certificate of formation, any means of notice reasonably calculated to give the members an opportunity to participate shall be sufficient.

(d) A quorum for the meeting shall be one more than $\frac{1}{2}$ by number of all members unless a higher number is provided in the limited liability company agreement or certificate of formation.

(e) In addition to any other business that may come before the meeting, the persons having management of the limited liability company shall report on the affairs of the company and shall either make available in writing the information listed in RSA 304-C:28, I(a)-(e) or be prepared to respond promptly in writing to demands for information pursuant to RSA 304-C:28.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:25, eff. Aug. 8, 1997.

Amendments

—1997. Paragraph VIII: Substituted “within 30 days of a written demand by any member” for “no less than once each year” and added “unless there has been such a meeting within 240 days prior to delivery of the demand” following “formation” in the introductory paragraph.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, “Asset Protection Planning in New Hampshire,” see 36 N.H.B.J. 5 (March 1995).

304-C:25. Liability to Third Parties.

Except as otherwise provided by this chapter, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company; and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Actions by and against limited liability companies, see RSA 304-C:75 et seq.

Indemnification of third parties, see RSA 304-C:9.

304-C:26. Agency Power of Members and Managers.

I. Except as provided in paragraph II, every member is an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

II. If the limited liability company agreement provides that management of the limited liability company is vested in a manager or managers:

(a) No member, solely by reason of being a member, is an agent of the limited liability company; and

(b) Every manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting, in fact, has no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

III. An act of a manager or a member which is not apparently for the carrying on in the usual way the business or affairs of the limited liability company does not bind the limited liability company unless authorized in accordance with the limited liability company agreement, at the time of the transaction or at any other time.

IV. An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:27. Events of Dissociation.

I. A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member withdraws by voluntary act from the limited liability company as provided in paragraph III.

(b) The member is removed as a member, if the limited liability company agreement neither provides for nor restricts removal of members, in accordance with RSA 304-C:27, IV.

(c) The member is removed as a member, in accordance with a limited liability company agreement.

(d) Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time, the member:

(1) Makes an assignment for the benefit of creditors;

(2) Files a voluntary petition in bankruptcy;

(3) Is adjudicated a bankrupt or insolvent;

(4) Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(5) Files an answer or other pleading admitting or failing to contest the material

allegations of a petition filed against the member in any proceeding of this nature;

(6) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(7) If within 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed; or

(8) If within 120 days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed or if within 120 days after the expiration of any stay, the appointment is not vacated.

(e) Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time, in the case of a member who is an individual:

(1) The member's death; or

(2) Except in the case of a single-member limited liability company, the entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or estate.

(f) Unless otherwise provided in a limited liability company agreement or by the written consent of all members at the time:

(1) In the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee.

(2) In the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company.

(3) In the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the administrative or judicial dissolution of the corporation and the lapse of 90 days after notice to the corporation of such dissolution without reinstatement.

(4) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

II. The members may provide in a limited liability company agreement for other events, the occurrence of which shall result in a person ceasing to be a member of the limited liability company.

III. Unless a limited liability company agreement provides that a member has no power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving 30 days' written notice to the other members, or such other notice as is provided for

in writing in the limited liability company agreement. If the member has the power to withdraw but the withdrawal is a breach of the limited liability company agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the limited liability company agreement or as a result of the wrongful conduct, including the reasonable costs of obtaining replacement of any services the withdrawn member was obligated to perform and may offset the damages against the amount otherwise distributable to him, in addition to pursuing any remedies provided for in the limited liability company agreement or otherwise available under applicable law. Unless otherwise provided in the limited liability company agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term, other than a withdrawal pursuant to RSA 304-C:41, II, is a breach of the limited liability company agreement.

IV. If a limited liability company agreement neither provides for nor restricts removal of members, a member or personal representative exercising powers of a member under RSA 304-C:49 may be removed for inability or unwillingness to exercise management responsibilities, actions beyond authority or contrary to the limited liability company agreement, or fraudulent or illegal actions in relation to the business and affairs of the company:

(a) By a vote of no less than $\frac{2}{3}$ by number of the other members acting reasonably and in good faith.

(b) By a court of competent jurisdiction on petition of at least 2 members, or, in the case of a limited liability company with only 2 members, one of the members.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:26, 27, 28, eff. Aug. 8, 1997.

References in text.

The reference to RSA 304-C:41, II at the end of par. III is obsolete in light of the amendment of RSA 304-C:41 by 1997, 120:30.

Amendments

—1997. Paragraph I: Rewrote subpar. (b), added “except in the case of a single-member limited liability company” preceding “the entry” in subpar. (e)(2), and rewrote former subpars. (f)-(i) as subpars. (f)(1)-(4).

Paragraph IV: Added.

Cross References.

Assignment of limited liability company interest, see RSA 304-C:46.

Effect of event of dissociation on dissolution of limited liability company, see RSA 304-C:50.

Powers of estate of deceased or incompetent member, see RSA 304-C:49.

304-C:28. Access to and Confidentiality of Information; Records.

I. Each member of a limited liability com-

pany has the right to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

(a) True and full information regarding the status of the business and financial condition of the limited liability company as may be set forth in information required to be documented or filed by law;

(b) Promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;

(c) A current list of the name and last known business, residence or mailing address of each member and manager;

(d) A copy of the limited liability company agreement and the certificate of formation and all amendments, together with executed copies of any written powers of attorney pursuant to which the limited liability company agreement and any certificate and all amendments have been executed;

(e) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(f) Other information regarding the affairs of the limited liability company as is just and reasonable.

II. Each manager shall have the right to examine all of the information described in paragraph I for a purpose reasonably related to his position as a manager.

III. The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

IV. A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

V. Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

VI. Access to information and records provided by this section may be conditioned upon and provided subject to such reasonable standards as may be set forth in a limited liability company agreement or otherwise established by a manager or, if there is no manager, the members, as to:

- (a) The location of the documents;
- (b) The time and days of the week during which the information will be available;
- (c) If the records are not those maintained in the ordinary course of business, the expense of providing the information requested.

VII. Any action to enforce any right arising under this section shall be brought in the superior court.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:29. Remedies for Breach of Limited Liability Company Agreement by Member.

A limited liability company agreement may provide that:

I. A member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or consequences; and

II. At the time or upon the occurrence of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:30. Admission of Managers.

A person may be named or designated as a manager of the limited liability company as provided in RSA 304-C:1, IX.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:31. Management of Limited Liability Company.

I. A limited liability company agreement may provide for the management, in whole or in part, of a limited liability company by a manager or managers, who shall be chosen by the members in the manner provided in the limited liability company agreement. A manager shall hold the offices and have the responsibilities accorded to him by the members and set forth in a limited liability company agreement. A manager shall cease to be a manager as provided in a limited liability company agreement.

II. In the event there is no provision for managers set forth in the limited liability company agreement, then the management of the limited liability company shall be vested in the members.

III. A person who is both a manager and a member has the rights and powers and is subject to the restrictions and liabilities of a manager, and except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and

liabilities, of a member to the extent of such person's participation in the limited liability company as a member.

IV. A member or manager shall be liable, responsible, and accountable in damages or as otherwise provided by law to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company, if such act constitutes gross negligence or willful misconduct.

V. Subject to the liability of a member or manager for acts of gross negligence or willful misconduct provided for in paragraph IV, and unless otherwise provided in the limited liability company agreement:

(a) A member or manager shall not be liable, responsible, or accountable in damages or as otherwise provided by law to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company;

(b) Every member and manager must account to the limited liability company and hold as trustee for it any unfair or unreasonable profit or benefit derived by that person without the consent or ratification of more than $\frac{1}{2}$ by number of the disinterested managers and members or other persons participating in the management of the business or affairs of the limited liability company, from:

(1) Transactions connected with the conduct or winding up of the limited liability company;

(2) Any use by the member or manager of the limited liability company's property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the manager or member as a result of such status; or

(3) Any contract, lease, or license between the limited liability company and the member or manager or any entity in which the member or manager has a substantial pecuniary interest; or

(c) A member who is not a manager of a limited liability company in which management is vested in managers shall have no duties to the limited liability company or to the other members solely by reason of acting in the capacity of a member.

VI. Subject to the liability of a member or manager for acts of gross negligence or willful misconduct provided for in RSA 304-C:31, IV, a limited liability company agreement may eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in paragraph V.

Source.

1993, 313:1, eff. July 1, 1993. 1994, 19:2, eff. June 21, 1994.

Amendments

—1994. Paragraph II: Substituted “the members” for “a member” following “vested in”.

Cross References.

Immunity of members and managers from personal liability to third parties, see RSA 304-C:25.

Indemnification of members and managers, see RSA 304-C:9.

304-C:32. Contributions by a Manager.

A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:33. Classes and Voting of Managers.

I. A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers.

II. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

III. A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

IV. A limited liability company agreement that grants to managers a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

V. Unless otherwise provided in a limited liability company agreement or this chapter, the

affirmative vote, approval or consent of more than ½ by number of the managers, if the management of the limited liability company is vested in managers, shall be required to decide any matter connected with the business of the limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:34. Remedies for Breach of Limited Liability Company Agreement by Manager.

A limited liability company agreement may provide that:

I. A manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences; and

II. At the time or upon the occurrence of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or consequences.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Immunity of members and managers from personal liability to third parties, see RSA 304-C:25.

304-C:35. Reliance on Reports and Information by Member or Manager.

A member or manager of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon such information, opinions, reports or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Immunity of members and managers from personal liability to third parties, see RSA 304-C:25.

Indemnification of members and managers, see RSA 304-C:9.

Finance

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Of New Hampshire LLC's and the Continuity of Life," see 34 N.H.B.J. 19 (1993).

304-C:36. Form of Contribution.

I. The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

II. At the time of admission of any member whose contribution is or will be in any form other than money, or who is admitted to membership without contribution, or when a present member makes an additional contribution in any form other than money, the persons having management of the limited liability company shall state in dollars a value for the contribution or that there was no contribution, and thereafter, in the absence of fraud, such determination is conclusive as to the value of the contribution or the fact that there was no contribution.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:37. Liability for Contribution.

I. A promise by a member to contribute to the limited liability company is not enforceable unless set forth in a writing signed by the member.

II. Except as provided in a limited liability company agreement, a member is obligated to a limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value of the contribution that has not been made. Such option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

III. Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter shall be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, or otherwise acts, in reliance on that obligation after the member signs a writing that reflects the obligation and before the compromise may enforce the original obligation.

IV. A limited liability company agreement may provide that the interest of any member who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating his limited liability company interest to that of nondefaulting members, a forced sale of his limited liability company interest, forfeiture of his limited liability company interest, the lending by other members of the amount necessary to meet his commitment, a fixing of the value of his limited liability company interest by appraisal or by formula and redemption or sale of his limited liability company interest at such value, or other penalty or consequence.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:38. Allocation of Profits and Losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated on the basis of the value, as of the date of contribution, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:39. Allocation of Distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in the limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made on the basis of the value, as of the date of contribution, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Limitations on distribution, see RSA 304-C:44.

Distributions

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Of New Hampshire LLC's and the Continuity of Life," see 34 N.H.B.J. 19 (1993).

304-C:40. Interim Distributions.

Except as provided in this subdivision, to the extent and at the times or upon the occurrence of the events specified in the limited liability company agreement, a member is entitled to receive from a limited liability company distributions before cessation of the member's membership pursuant to RSA 304-C:27 and before the dissolution and winding up of the limited liability company.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:29, eff. Aug. 8, 1997.

Amendments

—1997. Substituted "cessation of the member's membership" for "the member's dissociation from the limited liability company" preceding "pursuant".

304-C:41. Distribution Upon Cessation of Membership or Merger.

Except as provided in this subdivision, any member, upon ceasing to be a member pursuant to RSA 304-C:27, is entitled to receive any distribution to which the member is entitled under a limited liability company agreement, but, unless otherwise provided in a limited liability company agreement, the member is not entitled to receive any payment for the value of the member's limited liability company interest as of the date of cessation of membership based upon the member's right to share in distributions from the limited liability company. If the member ceasing to be a member receives no payment for the value of the member's interest in the limited liability company, the member ceasing to be a member shall continue to have the rights of an assignee of a limited liability company interest under RSA 304-C:46, II, subject to the limited liability company's right of offset under RSA 304-C:27, III.

Source.

1993, 313:1, eff. July 1, 1993. 1994, 19:3, eff. June 21, 1994. 1997, 120:30, eff. Aug. 8, 1997.

Amendments

—1997. Rewritten to the extent that a detailed comparison would be impracticable.

—1994. Paragraph V: Added.

Applicability of 1997 amendment.

1997, 120:41, eff. Aug. 8, 1997, provided that the amendment to this section by 1997, 120:30, affecting par. I of this section, shall not apply to New Hampshire limited liability companies formed prior to the effective date of this section until December 1, 1997; however, the amendments affecting pars. II–V shall take effect as provided in 1997, 120:43, I.

304-C:42. Distribution in Kind.

Except as provided in a limited liability company agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in a limited liability company agreement, a member may

not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:43. Right to Distribution.

Subject to RSA 304-C:44 and RSA 304-C:58, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:44. Limitations on Distribution.

I. A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

II. A member who receives a distribution in violation of paragraph I, and who knew at the time of the distribution that the distribution violated paragraph I, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of paragraph I, and who did not know at the time of the distribution that the distribution violated paragraph I, shall not be liable for the amount of the distribution.

Source.

1993, 313:1, eff. July 1, 1993.

Assignment of Limited Liability Company Interests

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Of New Hampshire LLC's and the Continuity of Life," 34 N.H.B.J. 19 (1993).

304-C:45. Nature of Limited Liability Company Interest.

A limited liability company interest is intangible personal property. A member has no interest in limited liability company property. Rights and interests of members, other than their limited liability company interests, are personal and non-transferable except to the extent that a transferee may succeed to such rights and interests in conformity with RSA 304-C:46-49.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:31, eff. Aug. 8, 1997.

Amendments

—1997. Inserted “intangible” preceding “personal” in the first sentence and added the third sentence.

304-C:46. Assignment of Limited Liability Company Interest.

I. A limited liability company interest is assignable in whole or in part, except as provided in a limited liability company agreement. Except as otherwise provided in paragraphs I and II, or as provided in RSA 304-C:48 and RSA 304-C:49, the assignee of a member’s limited liability company interest shall not be entitled to participate in the management and affairs of a limited liability company, or to exercise any rights or powers of a member. However, an assignee of a member’s limited liability company interest may exercise the rights and powers of a member either:

(a) Upon the approval of all of the members of the limited liability company other than the member assigning the limited liability company interest; or

(b) To the extent provided in the limited liability company agreement, and upon compliance with any procedure provided for in the limited liability company agreement.

II. Unless otherwise provided in a limited liability company agreement:

(a) An assignment entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(b) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his limited liability company interest. Unless otherwise provided in a limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

III. A limited liability company agreement may provide that a member’s interest in a

limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

IV. Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

V. “Assign” or “assignment” includes a transfer by gift, bequest, devise, or descent and distribution.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:32, 33, eff. Aug. 8, 1997.

Amendments

—1997. Paragraph I: Inserted “or as provided in RSA 304-C:48 and RSA 304-C:49” in the second sentence.

Paragraph V: Added.

304-C:47. Rights of Judgment Creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member’s limited liability company interest.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Creditor, defined, see RSA 382-A:1-201(12).

304-C:48. Right of Assignee to Become Member.

I. An assignee of a limited liability company interest shall become a member:

(a) Upon the approval of all of the members of the limited liability company other than the member assigning the limited liability company interest;

(b) To the extent provided in the limited liability company agreement, and upon compliance with any procedure provided for in the limited liability company agreement; or

(c) In the case of a single-member limited liability company only, upon a person succeeding to such interest of the member.

II. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. Notwithstanding the foregoing, unless otherwise provided in a limited liability company agreement:

(a) An assignee who becomes a member is liable for the obligations of his assignor to make contributions as provided in RSA 304-C:37; and

(b) An assignee who becomes a member shall not be liable for the obligations of the assignor under RSA 304-C:40–44, or for the assignor's liabilities to the limited liability company or others for the breach of duty to it or them. However, the assignee is not obligated for liabilities, including the obligations of the assignor to make contributions as provided in RSA 304-C:37, unknown to the assignee at the time the assignee became a member and which could not be ascertained from a limited liability company agreement.

III. Whether or not an assignee of a limited liability company interest becomes a member, and except to the extent otherwise provided in the limited liability company agreement, the assignor is not released from the liabilities and obligations referred to in paragraph II.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:34, eff. Aug. 8, 1997.

Amendments

—1997. Paragraph I: Substituted “shall” for “may” following “interest” and deleted “either” following “member” in the introductory paragraph, added subpar. (c) and made other minor stylistic changes.

304-C:49. Powers of Estate of Deceased or Incompetent Member.

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage such member's person or property, the member's executor, administrator, guardian, conservator or other legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property. Such member's rights shall be exercised in accordance with the limited liability company agreement and shall include any power under the limited liability company agreement, or this chapter, of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor for the purposes of winding up its affairs, unless provided otherwise in the limited liability company agreement.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:35, eff. Aug. 8, 1997.

Amendments

—1997. Rewritten to the extent that a detailed comparison would be impracticable.

Dissolution

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, “Of New Hampshire LLC's and the Continuity of Life,” see 34 N.H.B.J. 19 (1993).

304-C:50. Dissolution.

A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

I. The occurrence of events specified in a limited liability company agreement;

II. Unless otherwise provided in the limited liability company agreement, the vote or written consent of a majority of the members; or

III. The issuance of a notice of administrative dissolution under RSA 304-C:53, I or entry of a decree of judicial dissolution under RSA 304-C:51.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:36, eff. Aug. 8, 1997.

Amendments

—1997. Rewritten to the extent that a detailed comparison would be impracticable.

304-C:51. Judicial Dissolution.

On application by or for a member or manager the superior court may decree dissolution of a limited liability company upon the occurrence of one or more of the following:

I. Procuring the certificate of formation through fraud;

II. Exceeding or abusing the authority conferred upon the limited liability company by law;

III. Committing a violation of any provision of law whereby the limited liability company has forfeited its certificate of formation;

IV. Carrying on, conducting, or transacting its business in a persistently fraudulent or illegal manner;

V. Abuse of its power contrary to the public policy of the state;

VI. A deadlock in the management of a limited liability company, the members are unable to break the deadlock, and because of the deadlock either irreparable injury to the limited liability company is threatened or being suffered or its business and affairs can no longer be conducted to its advantage; or

VII. An event specified as a ground for judicial dissolution in the limited liability company agreement.

The attorney general may apply to the superior court for a decree of dissolution of a limited liability company upon the occurrence of one or more of the grounds stated in RSA 304-C:51, I through V.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:52. Grounds for Administrative Dissolution.

The secretary of state may administratively dissolve a limited liability company under RSA 304-C:53 if:

I. The limited liability company for 2 consecutive years does not pay within 60 days after they are due any annual report fees or penalties imposed by this chapter or other law;

II. The limited liability company for 2 consecutive years does not deliver its annual report to the secretary of state within 60 days after it is due;

III. The limited liability company is without a registered agent or registered office in this state for 60 days or more;

IV. The limited liability company does not notify the secretary of state within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

V. The limited liability company's period of duration stated in its certificate of formation expires.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:53. Procedure for and Effect of Administrative Dissolution.

I. If the secretary of state determines that one or more grounds exist under RSA 304-C:52 for dissolving a limited liability company, the secretary of state shall administratively dissolve the limited liability company by signing and mailing a notice of dissolution to the limited liability company at its principal address that recites the grounds for dissolution and effective date, together with an application for reinstatement.

II. A limited liability company administratively dissolved continues its existence, but may not carry on any business except that necessary to wind up and liquidate its business and affairs under RSA 304-C:56.

III. The administrative dissolution of a limited liability company shall not terminate the authority of its registered agent.

IV. The secretary of state shall not permit any other individual, corporation, limited liability company, or other business entity to assume the same name or a similar name, of a limited liability company administratively dissolved under this section, or any trade name registered by such limited liability company pursuant to RSA 349, for a period of 120 days following the notice of administrative dissolution without the written consent of such limited liability company.

Source.

1993, 313:1, eff. July 1, 1993. 2004, 248:49, eff. July 1, 2004.

Amendments

—2004. Paragraph I: Substituted “the secretary of state” for “he” following “liability company” and deleted “and shall at the same time give notice to the department of revenue administration” following “reinstatement”.

Paragraph IV: Deleted “deceptively” preceding “similar name”.

304-C:54. Reinstatement Following Administrative Dissolution.

I. A limited liability company administratively dissolved under RSA 304-C:53 may apply to the secretary of state for reinstatement within 3 years after the effective date of dissolution. The application shall:

(a) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the limited liability company's name or proposed name satisfies the requirements of RSA 304-C:3; and

(d) Contain a certificate from the New Hampshire department of revenue administration in accordance with RSA 77-A:18, III, if such application is received by the secretary of state more than 120 days after the notice of administrative dissolution is mailed.

II. If the secretary of state determines that the application contains the information required by subparagraph I(a), that the information is correct, and that the limited liability company name is available for registration, the secretary shall cancel the notice of dissolution and prepare a notice of reinstatement that recites the secretary's determination and the effective date of reinstatement and mail the notice to the limited liability company. If the application for reinstatement included a change of name of the limited liability company, the notice shall set forth the change of name of the limited liability company. The notice shall constitute an amendment to the certificate of formation.

III. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the limited liability company resumes carrying on its business as if the administrative dissolution had never occurred.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Filing fees, see RSA 304-C:81.

304-C:54-a. Late Reinstatement Hearing; Notice; Requirements.

I. A limited liability company administratively dissolved under RSA 304-C:53 may apply to the secretary of state for late reinstatement if more than 3 years have expired since the effective date of dissolution. The application shall:

(a) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the limited liability company's name or proposed name satisfies the requirements of RSA 304-C:3;

(d) Contain a certificate from the New Hampshire department of revenue administration in accordance with RSA 77-A:18, III, and RSA 77-E:12, III;

(e) Contain a statement asserting that no lawsuits are pending against the limited liability company;

(f) Contain a statement explaining the reason that reinstatement is being requested;

(g) Include all of the annual report fees, for each year since the date of dissolution; and

(h) Contain a statement from the commissioner of the department of employment security showing that to the best of the commissioner's knowledge, as of the date of the statement, such limited liability company has paid all of its contributions or that it was not liable for any contributions, or that it has made adequate provisions, with such surety as shall be satisfactory to the future payment of any contributions.

II. If the secretary of state determines that the application contains the information required by paragraph I, and that the limited liability company name is available for registration, and that it is accompanied by the fee required in RSA 304-C:81, I(d), the secretary of state shall schedule a public hearing on the late reinstatement. The public hearing shall be held before the secretary of state, or designee and the attorney general, or designee. Any interested party shall have the right to testify at a late reinstatement hearing. Late reinstatement hearings shall be conducted twice a year, on April 1 and September 1. If any such date falls upon a Saturday, Sunday, or legal holiday, the hearing shall be held on the first business day after each date. An application for late reinstatement must be received at least one month prior to a hearing date in order to be scheduled for that date.

III. Notice of the late reinstatement hearing shall be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office, or, if none in this state, its registered office, is or was last located. The notice shall:

(a) Clearly state the reason for the hearing.

(b) State the date, time, location of the hearing.

(c) Indicate that all interested parties are encouraged to attend or submit written comments within one week of the hearing.

(d) Include the mailing address of the secretary of state.

IV. If, after the public hearing, the secretary of state, in conjunction with the attorney general, determines that the information submitted in the application for late reinstatement is correct and that the limited liability company should be reinstated, the secretary of state shall

cancel the notice of dissolution and prepare a notice of reinstatement that recites the determination and the effective date of reinstatement and mail said notice to the limited liability company.

V. If the application for reinstatement included a change of name of the limited liability company, the notice shall set forth the change of name of the limited liability company and the fee required pursuant to RSA 304-C:81, I(c), and the notice shall constitute an amendment to the certificate of formation. If the application for reinstatement included a change of the registered agent, the notice shall set forth the name of the new registered agent and the fee required pursuant to RSA 304-C:81, I(b).

VI. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company resumes carrying on its business as if the administrative dissolution had never occurred.

VII. Except for provisions and requirements set forth in this section, late reinstatement hearings shall be subject to RSA 421-B:26-a.

Source.

2006, 316:13, eff. July 1, 2006.

304-C:55. Appeal From Denial of Reinstatement.

I. If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary shall mail the limited liability company a written notice that explains the reason or reasons for denial.

II. The limited liability company may appeal the denial of reinstatement to the superior court within 30 days after service of the notice of denial is perfected. The limited liability company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the limited liability company's application for reinstatement, and the secretary of state's notice of denial.

III. The court may summarily order the secretary of state to reinstate the dissolved limited liability company or may take other action the court considers appropriate.

IV. The court's final decision may be appealed as in other civil proceedings.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:56. Winding Up.

Unless otherwise provided in a limited liability company agreement:

I. The business or affairs of the limited liability company may be wound up:

(a) By the members or managers who have authority pursuant to RSA 304-C:31 to manage

the limited liability company prior to dissolution; or

(b) If one or more of such members or managers have engaged in wrongful conduct, or upon other cause shown, by the superior court on application of any member or any member's legal representative or assignee in which case the superior court shall appoint a liquidating trustee.

II. The persons winding up the business or affairs of the limited liability company, in the name of, and for and on behalf of, the limited liability company may:

- (a) Prosecute and defend suits;
 - (b) Settle and close the business of the limited liability company;
 - (c) Dispose of and transfer the property of the limited liability company;
 - (d) Discharge the liabilities of the limited liability company; and
 - (e) Distribute to the members any remaining assets of the limited liability company;
- All without affecting the liability of members and managers and without imposing liability on a liquidating trustee.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:57. Agency Power of Managers or Members After Dissolution.

I. Except as provided in paragraphs III, IV and V, after dissolution of the limited liability company, each of the members having authority to wind up the limited liability company's business and affairs can bind the limited liability company:

(a) By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

II. The filing of the certificate of cancellation shall be presumed to constitute notice of dissolution for purposes of subparagraph I(b).

III. An act of a member which is not binding on the limited liability company pursuant to paragraph I is binding if it is otherwise authorized by the limited liability company.

IV. An act of a member which would be binding under paragraph I or would be otherwise authorized but which is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

V. If the certificate of formation vests management of the limited liability company in a manager or managers, a manager shall have the authority of a member provided for in paragraph I, and no member shall have such author-

ity if the member is acting solely in the capacity of a member.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:58. Distribution of Assets.

I. Prior to making any distributions of assets to any members and managers upon the winding up of a limited liability company, the limited liability company or any person or persons authorized to wind up the limited liability company's affairs shall first obtain a certificate of dissolution from the department of revenue administration in accordance with RSA 77-A:18.

II. Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(a) Payment, or adequate provision for payment, shall be made to creditors, including, to the extent permitted by law, members who are creditors in satisfaction of liabilities of the limited liability company;

(b) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under RSA 304-C:40 or RSA 304-C:41; and

(c) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:59. Certificate of Cancellation.

After the dissolution of the limited liability company pursuant to RSA 304-C:50, the limited liability company shall file a certificate of cancellation with the secretary of state which shall set forth:

I. The name of the limited liability company;

II. The reason for filing the certificate of cancellation;

III. The effective date (which shall be a date certain) of the certificate of cancellation if it is not to be effective upon the filing; and

IV. Any other information the members or managers filing the certificate shall deem proper.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Certificate of merger as certificate of cancellation, see RSA 304-C:21.

Filing fees, see RSA 304-C:81.

Filing of certificate of cancellation as notice of dissolution, see RSA 304-C:57.

304-C:60. Known Claims Against Dissolved Limited Liability Company.

I. Upon dissolution, a limited liability company may dispose of the known claims against it by filing a certificate of cancellation pursuant to RSA 304-C:59 and following the procedures described in this section.

II. The limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of dissolution. The written notice must:

- (a) Describe information that must be included in a claim;
- (b) Provide a mailing address where a claim may be sent;
- (c) State the deadline, which may not be fewer than 120 days after the later of the date of the written notice or the filing of the certificate of cancellation pursuant to RSA 304-C:59 by which the limited liability company must receive the claim; and
- (d) State that the claim will be barred if not received by the deadline.

III. A claim against the limited liability company is barred:

- (a) If a claimant who was given written notice under paragraph II does not deliver the claim to the limited liability company by the deadline;
- (b) If a claimant whose claim was rejected by the limited liability company does not commence a proceeding to enforce the claim within 90 days after the date of the rejection notice.

IV. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:61. Unknown Claims Against Dissolved Limited Liability Company.

I. A limited liability company may publish notice of its dissolution pursuant to this section which requests that persons with claims against the limited liability company present them in accordance with the notice.

II. The notice must:

- (a) Be published once in a newspaper of general circulation in the county where the limited liability company's principal office (or, if none in this state, its registered office) is located;
- (b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (c) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced

within 5 years after the later of the publication of the notice or the filing of the certificate of cancellation.

III. If the limited liability company publishes a newspaper notice in accordance with paragraph II and files a certificate of cancellation pursuant to RSA 304-C:59, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the limited liability company within 5 years after the later of the publication date of the newspaper notice or the filing of the certificate of cancellation:

- (a) A claimant who did not receive written notice under RSA 304-C:60;
- (b) A claimant whose claim was timely sent to the limited liability company but not acted on;
- (c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

IV. A claim may be enforced under this section:

- (a) Against the limited liability company, to the extent of its undistributed assets; or
- (b) If the assets have been distributed in liquidation, against a member of the limited liability company to the extent of the member's pro rata share of the claim or the assets of the limited liability company distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

Source.

1993, 313:1, eff. July 1, 1993.

Foreign Limited Liability Companies

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Of New Hampshire LLC's and the Continuity of Life," see 34 N.H.B.J. 19 (1993).

304-C:62. Law Governing.

I. (a) The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers.

(b) A foreign limited liability company shall not be denied registration by reason of any difference between those laws and the laws of New Hampshire.

II. A foreign limited liability company shall be subject to and have the benefit of RSA 304-C:7.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:63. Transactions not Constituting Doing Business.

I. The following activities of a foreign limited liability company, among others, do not constitute doing business within the meaning of RSA 304-C:64:

- (a) Maintaining, defending, or settling any proceeding;
- (b) Holding meetings of its members or managers or carrying on any other activities concerning its internal affairs;
- (c) Maintaining bank accounts;
- (d) Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositories with respect to those securities or interests;
- (e) Selling through independent contractors;
- (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (i) Owning, without more, real or personal property;
- (j) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature; or
- (k) Transacting business in interstate commerce.

II. The foreign limited liability company shall not be considered to be doing business solely because it:

- (a) Owns a controlling interest in a corporation that is doing business;
- (b) Is a limited partner of a limited partnership that is doing business; or
- (c) Is a member or manager of a limited liability company or foreign limited liability company that is doing business.

III. This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state, and nothing in this section shall be construed so as to preclude a determination that a foreign limited liability company is carrying on a business activity in this state within the meaning of RSA 77-A:1, XII.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:64. Registration Required; Application.

I. Before doing business in New Hampshire, a foreign limited liability company shall register with the secretary of state. In order to register, a foreign limited liability company shall file with the secretary of state the certificate required by RSA 421-B:13, I-a and an application for registration as a foreign limited liability company, setting forth:

(a) The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in New Hampshire;

(b) The state, territory, possession or other jurisdiction or country where formed, the date of its formation and a certificate of existence (or document of similar import) duly authorized by the secretary of state or other official having custody of limited liability company records in the state or country under the law of which it was formed, issued not more than 60 days before the application is received by the secretary of state;

(c) The nature of the business or purposes to be conducted or promoted in New Hampshire;

(d) The address of the registered office and name and address of the registered agent for service of process required to be maintained under RSA 304-C:66, II; and

(e) The name and address of any manager or member executing the application.

II. A person shall not be deemed to be doing business in New Hampshire solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Filing fees, see RSA 304-C:81.

Registration of foreign partnerships, see RSA 305-A:1.

304-C:65. Issuance of Registration.

I. If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) Certify that the application has been filed by endorsing upon the original application the word "filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud.

(b) File and index the endorsed application.

II. The copy of the application, similarly endorsed, shall be returned to the person who filed the application or such person's representative.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:66. Name; Registered Office; Registered Agent.

I. A foreign limited liability company may register with the secretary of state under its name, provided however:

(a) That the name must be one that could be registered by a domestic limited liability company;

(b) That the name under which a foreign limited liability company is registering must include the words "limited liability company" or the abbreviation "L.L.C." or similar abbreviation;

(c) That a foreign limited liability company may use a fictitious name under which it may register and transact business in this state if its real name has been determined by the secretary of state to be unavailable;

(d) A foreign limited liability company name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RSA 304-C:7 and its certificate of formation;

(e) Except as authorized by subparagraphs (f) and (g), a foreign limited liability company name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(1) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(3) The fictitious name of another foreign corporation authorized to transact business in this state.

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(5) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

(f) A foreign limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in subparagraph (e), as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(1) The holder or holders of the name as described in subparagraph (e) gives written consent to use the name that is not distinguishable from or likely to be confused with or mistaken for the name of the applying foreign limited liability company; or if the

name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(2) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying foreign limited liability company; or

(3) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(g) A foreign limited liability company may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user foreign limited liability company:

(1) Has merged with the other entity;

(2) Has been formed by reorganization of the other entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other entity.

(h) This chapter does not control the use of fictitious names.

(i) Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a foreign limited liability company under the same name as the trade name.

II. Each foreign limited liability company shall have and maintain in New Hampshire:

(a) A registered office that may be the same as any of its places of business in New Hampshire.

(b) A registered agent, which agent may be:

(1) An individual who resides in this state and whose business office is identical with the registered office; or

(2) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose business office is identical with the registered office; or

(3) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or

(4) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

III. A foreign limited liability company registered to transact business in this state may change its registered office or registered agent, or both by delivering to the secretary of state for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name and address of its current registered agent;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

IV. If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign limited liability company for which he is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of paragraph III and recites that the foreign limited liability company has been notified of the change.

V. The registered agent of a foreign limited liability company registered to do business in this state may resign from such position by signing and delivering to the secretary of state for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

VI. The secretary of state shall mail a copy of the registered agent's statement of resignation to the foreign limited liability company at its principal office address shown in its most recent annual report.

VII. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed or on the appointment of a successor registered agent, whichever occurs first.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:37, eff. Aug. 8, 1997. 2004, 248:50, eff. July 1, 2004.

Amendments

—2004. Paragraphs I and II: Rewritten to the extent that a detailed comparison would be impracticable.

—1997. Paragraph I(b): Added "or similar abbreviation" following "L.L.C."

Cross References.

Filing fees, see RSA 304-C:81.

Name of foreign partnership, see RSA 305-A:2-e.

304-C:67. Amendments to Application.

I. A foreign limited liability company registered to transact business in New Hampshire shall amend its application for registration if it

changes:

(a) Its name; or

(b) Its state or country of formation.

II. The filing provisions of RSA 304-C:2 shall apply to the amendment of a foreign limited liability company's application for registration.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Changes to certificate of authority of foreign partnerships, see RSA 305-A:2-a.

Filing fees, see RSA 304-C:81.

304-C:68. Cancellation of Registration.

I. A foreign limited liability company registered to do business in this state may cancel its registration upon procuring from the secretary of state a certificate of cancellation. In order to procure such certificate, the foreign limited liability company shall deliver to the secretary of state an application for cancellation, which shall set forth:

(a) The name of the foreign limited liability company and the state or other jurisdiction under the laws of which it is formed;

(b) That the foreign limited liability company is not doing business in this state;

(c) That the foreign limited liability company surrenders its certificate of registration to transact business in this state;

(d) That the foreign limited liability company revokes the authority of its registered agent for service of process in this state and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to do business in this state may thereafter be made on such foreign limited liability company by service thereof upon the secretary of state;

(e) An address to which a person may mail a copy of any process against the foreign limited liability company; and

(f) A statement for withdrawal from the department of revenue administration pursuant to RSA 77-A:18, II.

II. The application for cancellation shall be in the form and manner designated by the secretary of state and shall be executed on behalf of the foreign limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its formation, or, if the foreign limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

III. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in this state.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Fee for certificate of cancellation, see RSA 304-C:81.

Suspension of certificate of authority of foreign partnerships, see RSA 305-A:2-b.

304-C:69. Doing Business Without Registration.

I. A foreign limited liability company doing business in New Hampshire may not maintain any action, suit or proceeding in New Hampshire until it has registered in New Hampshire and has paid all fees for the period during which it did business in New Hampshire while unregistered.

II. The failure of a foreign limited liability company to register in New Hampshire does not impair:

(a) The validity of any contract or act of the foreign limited liability company.

(b) The right of any other party to the contract to maintain any action, suit or proceeding on the contract.

(c) Prevent the foreign limited liability company from defending any action, suit or proceeding in any court of New Hampshire.

III. A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in New Hampshire without registration.

IV. A foreign limited liability company which does business in this state without registration shall be liable to the state for the years or parts thereof during which it transacted business in this state without registration in an amount equal to all fees which would have been imposed by this chapter upon that foreign limited liability company had it duly registered, and all penalties imposed by this chapter. The attorney general may bring proceedings to recover all amounts due this state under the provisions of this section.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Fees, see RSA 304-C:81.

Penalty provision for noncompliance of foreign partnership provisions, see RSA 305-A:3.

304-C:70. Service of Process on Registered Foreign Limited Liability Companies.

I. A foreign limited liability company's registered agent is the agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

II. If a foreign limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, the foreign limited liability company may be served by registered or certified mail, return receipt requested,

addressed to the foreign limited liability company at its principal office. Service is perfected under this section at the earliest of:

(a) The date the foreign limited liability company receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign limited liability company; or

(c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

III. This section does not prescribe the only means, or necessarily the required means, of serving a foreign limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Service of process on foreign partnerships, see RSA 305-A:6.

304-C:71. Service of Process on Unregistered Foreign Limited Liability Companies.

I. Any foreign limited liability company not registered under RSA 304-C:64, doing business in New Hampshire shall be deemed to have appointed and constituted the secretary of state of New Hampshire its agent for the acceptance of legal process in any civil action, suit or proceeding against it in any state or federal court in New Hampshire arising or growing out of any business done by it within New Hampshire. The doing of business in New Hampshire by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within New Hampshire.

II. Whenever the words "doing business," "the doing of business" or "business done in this state," by any such foreign limited liability company are used in this section, they shall mean the course of practice of carrying on any business activities in New Hampshire, including, without limiting the generality of the foregoing, the solicitation of business or orders in New Hampshire.

III. Service upon the secretary of state pursuant to paragraph I shall be made in accordance with the provisions of RSA 510:4, II.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Fee for service of process upon secretary of state as resident agent, see RSA 304-C:81.

304-C:72. Grounds for Revocation.

The secretary of state may commence a proceeding under RSA 304-C:73 to revoke the registration of a foreign limited liability company

authorized to transact business in this state if:

I. The foreign limited liability company does not deliver its annual report to the secretary of state within 60 days after it is due;

II. The foreign limited liability company does not pay within 60 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

III. The foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

IV. A member, manager, or agent of the foreign limited liability company signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

V. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having the custody of limited liability company records in the state or country under whose law the foreign limited liability company is formed stating that it has been dissolved or disappeared as the result of a merger.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Suspension of registration of foreign partnerships, see RSA 305-A:2-b.

304-C:73. Procedure for and Effect of Revocation.

I. If the secretary of state determines that one or more grounds exist under RSA 304-C:72 for revocation of a registration, the secretary shall send written notice of the secretary's determination under RSA 304-C:72 to the foreign limited liability company.

II. If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after written notice is sent, the secretary of state may revoke the foreign limited liability company's registration by issuing a notice of revocation and mailing the notice of revocation to the foreign limited liability company at its principal office listed on the records of the New Hampshire secretary of state.

III. The authority of a foreign limited liability to transact business in this state ceases on the date shown on the notice of revocation.

IV. Revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the limited liability company.

Source.

1993, 313:1, eff. July 1, 1993. 2004, 248:51, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Fee for service of process upon secretary of state as resident agent, see RSA 304-C:81.

304-C:74. Appeal From Revocation.

I. A foreign limited liability company may appeal the secretary of state's revocation of its registration to the superior court within 30 days after service of the notice of revocation is perfected. The foreign limited liability company appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its registration and the secretary of state's certificate of revocation.

II. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate, except that nothing in this section shall be construed to preclude a determination that a foreign limited liability company is carrying on business activity within this state within the meaning of RSA 77-A:1, XII.

III. The court's final decision may be appealed as in other civil proceedings.

Source.

1993, 313:1, eff. July 1, 1993. 2004, 248:52, eff. July 1, 2004.

Amendments

—2004. Paragraph I: Substituted "notice" for "certificate" following "service of the" in the first sentence.

Actions and Derivative Actions

304-C:75. Actions By and Against the Limited Liability Company.

An action may be brought by or against a limited liability company in its own name.

Source.

1993, 313:1, eff. July 1, 1993.

Cross References.

Representation of limited liability company in small claims court, see RSA 503:11.

304-C:76. Right to Bring Action on Behalf of Limited Liability Company.

I. A member or members may bring an action in the superior court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed, provided that:

(a) All such plaintiff members are members at the time of bringing such action;

(b) All such plaintiff members are members either:

(1) At the time of the transaction of which the plaintiffs complain; or

(2) The plaintiffs' status as members had devolved on the plaintiffs by operation of

law or pursuant to the terms of a limited liability company agreement from persons who were members at the time of the transaction; and

(c) The complaint sets forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

II. Unless otherwise provided in a limited liability company agreement, an action on behalf of the limited liability company may be brought in the name of the limited liability company by:

(a) One or more members of the limited liability company, whether or not a limited liability company agreement vests management of the limited liability company in one or more managers, who are authorized to bring action by the vote of more than $\frac{1}{2}$ by number of the members eligible to vote thereon; provided that the vote of any member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded; or

(b) One or more managers of the limited liability company, if the limited liability company agreement vests management of the limited liability company in one or more managers, who are authorized to do so by the vote required pursuant to RSA 304-C:24 of the members eligible to vote thereon, provided that in determining such required vote, the vote of any manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

III. If an action brought pursuant to paragraph I or II is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from the limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:77. Effect of Lack of Authority to Bring Action.

The lack of authority of a member or manager to sue on behalf of the limited liability company may not be asserted as a defense to an action by the limited liability company or by the limited liability company as a basis for bringing a subsequent suit on the same cause of action.

Source.

1993, 313:1, eff. July 1, 1993.

Miscellaneous

304-C:78. Construction and Application of Chapter and Limited Liability Company Agreement.

I. The rule that statutes in derogation of the

common law are to be strictly construed shall have no application to this chapter.

II. It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

III. To the extent that, at law or in equity, a member or manager has duties, including fiduciary duties, and liabilities relating to such duties to a limited liability company or to another member or manager:

(a) Any such member or manager acting under a limited liability company agreement shall not be liable to the limited liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreements.

(b) Subject to RSA 304-C:31, IV, the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:79. Cases not Provided for in This Chapter.

In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:80. Annual Report for Secretary of State.

I. Each domestic limited liability company and each foreign limited liability company registered to do business in this state, except limited liability companies making returns to the insurance commissioner, shall deliver to the secretary of state for filing an annual report that sets forth:

(a) The name of the limited liability company and the state or country under whose law it is formed;

(b) The address of its registered office and the name of its registered agent at that office in this state;

(c) The address of its principal office;

(d) The names and business addresses of its managers or, if there are no managers, at least one member; and

(e) A brief description of the nature of its business.

II. Information in the annual report shall be current as of January 1 of the year the report is due.

III. The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic limited liability company was

formed or a foreign limited liability company was registered to do business; provided, however, that a foreign limited liability company that has registered at any time between December 1 of the preceding year and April 1, or a domestic limited liability company that was formed during the same period, shall not be required to file an annual report during that year. Subsequent annual reports shall be delivered to the secretary of state between January 1 and April 1 of the following calendar years.

IV. If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is deemed to be timely filed.

Source.

1993, 313:1, eff. July 1, 1993. 1996, 239:4, 5, eff. Aug. 9, 1996.

Amendments

—1996. Paragraph I(a): Substituted “formed” for “incorporated” following “law it is”.

Paragraph II: Rewritten to the extent that a detailed comparison would be impracticable.

304-C:81. Fees.

I. No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the secretary of state for deposit in the general fund of the state of New Hampshire:

(a) Upon the receipt for filing of an application for reservation of name or a notice of transfer of reservation pursuant to RSA 304-C:4, a fee in the amount of \$15.

(b) Upon the receipt for filing of a statement under RSA 304-C:5, II, a fee in the amount of \$15; upon the receipt for filing of a statement under RSA 304-C:5, IV, a fee in the amount of \$15.

(c) Upon the receipt for filing of a certificate of formation under RSA 304-C:12, a fee in the amount of \$50; upon the receipt for filing of a certificate of amendment under RSA 304-C:13, a certificate of merger under RSA 304-C:21, a certificate of conversion under RSA 304-C:17-a, or a restated certificate of formation under RSA 304-C:17, a fee in the amount of \$35; and upon the receipt for filing of a certificate of cancellation of a domestic limited liability company under RSA 304-C:59, a fee in the amount of \$35.

(d) Upon receipt for filing of an annual report under RSA 304-C:80, a fee in the amount of \$100; for failure or refusal to file an annual report or pay the filing fee on or before April 1 of any year, an additional late filing fee in the amount of \$50; upon receipt for filing of an

application for reinstatement pursuant to RSA 304-C:54, a fee of \$135; and upon receipt for filing of an application for late reinstatement pursuant to RSA 304-C:54-a, a fee of \$500.

(e) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of \$1 per page and \$5 for the certificate.

(f) Upon the receipt for filing of an application for registration as a foreign limited liability company under RSA 304-C:64, a fee in the amount of \$50; upon the receipt for filing of a certificate of cancellation under RSA 304-C:68, a fee in the amount of \$35; and upon receipt for filing of an amendment to an application under RSA 304-C:67, a fee in the amount of \$35.

(g) Upon the receipt for filing of a statement under RSA 304-C:66, III, a fee in the amount of \$15, and upon the receipt for filing of a statement under RSA 304-C:66, IV, a fee in the amount of \$15.

(h) For issuing any certificate of the secretary of state, including but not limited to a certificate of good standing, other than a certification of a copy under subparagraph I(e), a fee in the amount of \$5, except that for issuing any certificate of the secretary of state that recites all of a limited liability company's filings with the secretary of state, a fee of \$10 shall be paid for each such certificate.

(i) For receiving, filing or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee in the amount of \$15.

II. The secretary of state shall establish, and may from time to time amend, a schedule of specific fees payable pursuant to this section.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:38, eff. Aug. 8, 1997. 2004, 248:53, eff. July 1, 2004. 2006, 81:4, eff. May 5, 2006. 2006, 316:14, eff. July 1, 2006.

Amendments

—2006. Paragraph I(d): Substituted “\$50” for “\$25 per month”.

Paragraph I(d): Deleted “and” preceding “upon receipt” and added the end of the sentence following “\$135”.

—2004. Paragraph I(c): Inserted “a fee in the amount of \$50; upon the receipt for filing of” following “RSA 304-C:12” and made a minor change in punctuation.

Paragraph I(d): Substituted “on or before April 1” for “by April 15”, “\$25 per month” for “\$50” and “\$135” for “\$75”.

Paragraph I(e): Amended without change.

Paragraph I(f): Substituted “a fee in the amount of \$50; upon the receipt for filing of a certificate” for “or a certificate”, “\$35” for “\$200” preceding “and upon”, and “\$35” for “\$15” following “in the amount of”.

Paragraph I(g): Inserted “and” following “\$15” and deleted “and upon the receipt for filing of a statement under RSA 304-C:66, V, a fee in the amount of \$2.50” at the end of the paragraph.

—1997. Paragraph I(c): Inserted “a certificate of conversion under RSA 304-C:17-a”.

Reimbursement to Administratively Dissolved Entities.

2006, 81:5 provides: “The secretary of state shall reimburse any business entity that received a notice of administrative

dissolution dated September 1, 2005 for any fee paid for a reinstatement application and any late fees paid in excess of \$50."

Reimbursement of Late Fees.

2006, 81:6 provides: "The secretary of state shall reimburse any business entity, not included in section 5 of this act [which is noted above], late fees in excess of \$50 on annual returns paid by the business entity from May 1, 2005 through June 30, 2006."

304-C:82. Administration.

I. The secretary of state shall collect all fees required under this chapter and shall pay them to the state treasurer to be deposited in the general fund as unrestricted revenue, except as provided in paragraph II.

II. The state treasurer shall pay the expenses of administering this chapter out of any money in the treasury not otherwise appropriated until the fees collected pursuant to this chapter have been received by him. Thereafter, he shall pay the expenses of administering this chapter out of the fees collected under this chapter and shall reimburse the treasury for previous expenses paid by him. The governor is authorized to draw his warrant for the sums authorized by this section out of any money in the treasury not otherwise appropriated.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:83. Rulemaking.

The secretary of state may adopt rules, under RSA 541-A, necessary to implement the provisions of this chapter.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:84. Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

Source.

1993, 313:1, eff. July 1, 1993.

304-C:85. Reserved Power of State of New Hampshire to Alter or Repeal Chapter.

All provisions of this chapter may be altered from time to time or repealed, and all rights of members and managers are subject to this reservation.

Source.

1993, 313:1, eff. July 1, 1993.

CHAPTER 304-D

PROFESSIONAL LIMITED LIABILITY COMPANIES

Section	
304-D:1.	Definition; Professional Service; Professional Limited Liability Companies.
304-D:2.	Permissible Purposes of Professional Limited Liability Companies.
304-D:3.	Prohibited Activities.
304-D:4.	General Powers.
304-D:5.	Rendering Professional Services.
304-D:6.	Name of Professional Limited Liability Company.
304-D:7.	Members and Transfer of Interests; Certificates.
304-D:8.	Death or Disqualification of a Member.
304-D:9.	Liability of Members and Employees.
304-D:10.	Professional Relationships; Privileged Communications.
304-D:11.	Voting.
304-D:12.	Officers and Managers.
304-D:13.	Merger.
304-D:14.	Termination of Professional Activities.
304-D:15.	Involuntary Dissolution.
304-D:16.	Admission of Foreign Professional Limited Liability Companies.
304-D:17.	Application for Certificate of Authority.
304-D:18.	Revocation of Certificate of Authority.
304-D:19.	Annual Report.
304-D:20.	Effect of RSA 304-C on This Chapter.

Cross References.

Business profits tax, see RSA 77-A.

Consumers' cooperative associations, generally, see RSA 301-A.

Corporate charters, generally, see RSA 293.

Dividend-paying corporations, generally, see RSA 296.

General powers of corporations, see RSA 295.

Limited liability companies, see RSA 304-C.

New Hampshire Business Corporation Act, see RSA 293-A.

New Hampshire Investment Trusts, generally, see RSA 293-B.

Professional corporations, generally, see RSA 294-A.

Proprietors of common lands, generally, see RSA 303.

Uniform Limited Partnership Act, see RSA 304-B.

Uniform Partnership Act, see RSA 304-A.

Voluntary corporations and associations, generally, see RSA 292.

304-D:1. Definition; Professional Service; Professional Limited Liability Companies.

In this chapter:

I. "Disqualified person" means a natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity which for any reason is or becomes ineligible under this chapter to be a member of a professional limited liability company.

II. "Domestic professional limited liability company" means a professional limited liability company as defined in RSA 304-D:1, V.

III. "Foreign limited liability company" means a limited liability company for profit organized for the purpose of rendering professional services under a law other than the laws of this state.

IV. "Licensing authority" means the officer, board, agency, court or other authority in this

state which has the power to license, register, certificate, or otherwise grant legal authorization to render a professional service.

V. "Professional limited liability company" means a limited liability company for profit organized under this chapter.

VI. "Professional service" means any service which may lawfully be rendered only by certified public accountants, public accountants, architects, attorneys, podiatrists, chiropractors, dentists, pharmacists, professional engineers, land surveyors, registered professional nurses, optometrists, physicians and surgeons, psychologists, veterinarians, and all other professionals licensed, registered, certified, or otherwise authorized and permitted to practice independently under the provisions of RSA 309-A, 310-A, 311, 315, 316-A, 317-A, 318, 326-B, 327, 329, 330-A, or 332-B.

VII. "Qualified person" means a natural person, general partnership, professional corporation or professional limited liability company which is eligible under this chapter to be a member of a professional limited liability company.

Source.

1993, 313:1, eff. July 1, 1993. 1996, 24:2, eff. June 14, 1996.

References in text.

RSA 309-A, referred to in par. VI, was repealed by 1994, 316:5, eff. July 1, 1994.

Revision note.

Substituted "316-A" for "316" in par. VI in view of the repeal of RSA 316, and the enactment of RSA 316-A by 1988, 87.

Amendments

—1996. Paragraph VI: Deleted "and" preceding "veterinarians" and inserted "and all other professionals" thereafter, and inserted "and permitted to practice independently" following "or otherwise authorized".

Applicability of amendment

—1996 amendment. 1996, 24:3, eff. June, 14, 1996, provided that the amendment to this section by section 1 of the act shall apply to all domestic and foreign professional corporations and professional limited liability companies organized and in existence in this state as of June 14, 1996.

304-D:2. Permissible Purposes of Professional Limited Liability Companies.

I. Except as provided in RSA 304-D:2, II, professional limited liability companies may be organized under this chapter only for the purpose of rendering professional services, including necessary related services, within a single profession.

II. A professional limited liability company may be formed for the purpose of rendering professional services within 2 or more professions and for any purpose or purposes of this state for which limited liability companies may be organized under the law of this state applicable to limited liability companies to the extent that the combination of professional purposes or of professional and business purposes is permit-

ted by the licensing laws of this state applicable to such professions and by rules adopted under those laws.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:3. Prohibited Activities.

A professional limited liability company shall not engage in any profession or business other than the profession or professions and businesses permitted by its certificate of formation, except that a professional limited liability company may invest its funds in real estate, mortgages, stocks, bonds or any other type of investment.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:4. General Powers.

A professional limited liability company shall have the powers enumerated in the laws of this state applicable to limited liability companies, except that a professional limited liability company may be a promoter, general partner, member, employee or manager only of a partnership, limited liability company, or corporation engaged only in rendering professional services or in carrying on business permitted by the certificate of formation of the professional limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:5. Rendering Professional Services.

A professional limited liability company, domestic or foreign, may render professional services in this state only through those persons permitted to render such services by the appropriate licensing authority. Nothing in this chapter shall be construed:

I. To require that any person who is employed by a professional limited liability company must be licensed to perform services for which no license is otherwise required;

II. To prohibit the rendering of professional services by a licensed natural person acting in an individual capacity. Any such person may also be a member, manager, employee or agent of a professional limited liability company, domestic or foreign; or

III. To prohibit the rendering of professional services by a person acting under the supervision or control of a licensed natural person.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:6. Name of Professional Limited Liability Company.

The name of a domestic professional limited

liability company or of a foreign professional limited liability company authorized to transact business in this state:

I. Shall end with one of the following words or abbreviations: "professional limited liability company" or "P.L.L.C." or similar abbreviation;

II. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its certificate of formation or application for registration;

III. Shall satisfy the requirements of RSA 304-C:3, except that a name shall not constitute a similar name if the similarity results from the use in the professional limited liability company's name of personal names of its members or former members or of natural persons who were associated with a predecessor entity;

IV. Shall otherwise conform to any rule adopted by a licensing authority having jurisdiction of a professional service described in the certificate of the professional limited liability company.

Source.

1993, 313:1, eff. July 1, 1993. 2004, 248:54, eff. July 1, 2004.

Amendments

—2004. Paragraph I: Added "or similar abbreviation" at the end of the paragraph.

Paragraph III: Deleted "deceptively" preceding "similar name".

304-D:7. Members and Transfer of Interests; Certificates.

I. No person may be a member of a professional limited liability company except:

(a) Natural persons who are authorized by law in this state, any other state or territory of the United States or the District of Columbia, or any foreign country to render professional services permitted by the certificate of formation of the professional limited liability company;

(b) Professional limited liability companies, domestic or foreign, in which all the members are qualified persons with respect to the professional limited liability company;

(c) General partnerships in which all the partners are qualified persons with respect to the professional limited liability company; and

(d) Professional corporations, domestic or foreign, authorized by law in this state to render professional services permitted by the certificate of incorporation of the professional corporation.

II. Where deemed necessary by the licensing authority for any profession in order to prevent violations of the ethical standards of the profession, the licensing authority may by rule further restrict, condition, or abridge the requirements to be a member of professional limited liability companies. No such rule shall, of itself, have the effect of causing a member of a professional limited liability company at the time the rule becomes effective to become a disqualified per-

son or of suspending the terms of any purchase, option or other agreement then in force providing for the purchase of a professional limited liability company interest by any person. Any membership that is in violation of this section or in violation of any rule adopted under this section shall be void.

III. A member of a professional limited liability company may transfer, assign or pledge the interest of that member in the professional limited liability company only to natural persons, professional limited liability companies, general partnerships and professional corporations qualified under this chapter to be members of a professional limited liability company. Any transfer, assignment or pledge of an interest in violation of this section shall be void; however, nothing contained in this section shall prohibit the transfer of an interest in a professional limited liability company by operation of law or court decree.

IV. A member of a professional limited liability company becoming a disqualified person, unless such disqualification is for less than 5 months from the date of disqualification, shall cause cessation of membership for the purposes of RSA 304-C:27.

Source.

1993, 313:1, eff. July 1, 1993. 1997, 120:39, eff. Aug. 8, 1997.

Amendments

—1997. Paragraph IV: Substituted "cause cessation of membership" for "constitute an event of dissociation" preceding "for the purposes".

304-D:8. Death or Disqualification of a Member.

Unless otherwise provided in the limited liability company agreement, upon the death of a member of a professional limited liability company, or if a member of a professional limited liability company becomes a disqualified person, or if an interest in a professional limited liability company is transferred by operation of law or court decree to a disqualified person, the interest of the deceased member or of the disqualified person may be assigned to a qualified person.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:9. Liability of Members and Employees.

I. Any reference to a professional limited liability company in this section shall include both domestic and foreign professional limited liability companies.

II. Every individual who renders professional services as a member, manager, or employee of a professional limited liability company shall be liable for any negligent or wrongful act or omission in which he personally participates to the

same extent as if he rendered the services as a sole practitioner. A member, manager, or employee of a professional limited liability company shall not be liable for the conduct of other members, managers, or employees unless he is at fault in appointing, supervising, or cooperating with them.

III. Every professional limited liability company whose members, managers, or employees perform professional services within the scope of their membership or employment or of their apparent authority to act for the professional limited liability company shall be liable to the same extent as its members, managers, and employees.

IV. Except as otherwise provided by law, the personal liability of a member, manager, or employee of a professional limited liability company shall be no greater in any respect than that of a member, manager, or employee of a limited liability company organized under the laws of this state applicable to limited liability companies.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:10. Professional Relationships; Privileged Communications.

I. The relationship between an individual performing professional services as a member, manager, or employee of a professional limited liability company, domestic or foreign, and a client or patient shall be the same as if the individual performed the services as a sole practitioner.

II. The relationship between a professional limited liability company, domestic or foreign, performing professional services and the client or patient shall be the same as between the client or patient and the individual performing the services.

III. Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the laws of this state, whether statutory or derived from common law, shall not be affected by reason of formation under this chapter. The privilege shall extend to a professional limited liability company, domestic or foreign, and its members, managers, and employees in all cases in which it shall be applicable to communications between a natural person rendering professional services on behalf of the professional limited liability company and the person receiving the services.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:11. Voting.

No proxy for the purpose of voting as a member or manager in a professional limited liability

company shall be valid unless it is given to a qualified person. A voting trust with respect to voting in a professional limited liability company shall not be valid unless all the trustees and beneficiaries of the voting trust are qualified persons, except that a voting trust may be validly continued for a period of 10 months after the death of a deceased beneficiary or for a period of 5 months after a beneficiary has become a disqualified person.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:12. Officers and Managers.

Except as otherwise provided by the licensing laws of this state and rules adopted under these laws or by any licensing authority in this state, each manager of a professional limited liability company, if any, and all the officers, if any, other than the secretary or an assistant secretary and the treasurer or an assistant treasurer shall be qualified persons with respect to the professional limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:13. Merger.

I. A professional limited liability company may merge with another professional limited liability company, domestic, or foreign, only if every member of each professional limited liability company is qualified to be a member of the surviving professional limited liability company.

II. Upon the merger of a professional limited liability company, if the surviving professional limited liability company is to render professional services in this state, it shall comply with this chapter.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:14. Termination of Professional Activities.

If a professional limited liability company ceases to render professional services, it shall, within a reasonable period of time, either dissolve and liquidate or amend its certificate of formation to delete from its stated purposes the rendering of professional services and to conform to the requirements of the law of this state applicable to limited liability companies regarding its name. The professional limited liability company may then continue in existence as a limited liability company under the limited liability law of this state and shall no longer be subject to the provisions of this chapter.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:15. Involuntary Dissolution.

I. A professional limited liability company may be dissolved involuntarily by a decree of the superior court in an action filed by the attorney general when it is established that the professional limited liability company has failed to comply with any provision of this chapter applicable to it within 60 days after receipt of written notice of noncompliance.

II. Each licensing authority in this state and the secretary of state shall certify to the attorney general, from time to time, the names of all professional limited liability companies which have given cause for dissolution as provided in this chapter, together with the pertinent facts.

III. Whenever the secretary of state or any licensing authority certifies the name of a professional limited liability company to the attorney general as having given any cause for dissolution, the secretary of state or the licensing authority shall concurrently mail to the professional limited liability company at its registered office a notice that the certification has been made. Upon the receipt of the certification, the attorney general shall file an action in the name of the state against the professional limited liability company for its dissolution.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:16. Admission of Foreign Professional Limited Liability Companies.

I. A foreign professional limited liability company shall be entitled to register to do business in this state only if:

(a) The name of the foreign professional limited liability company meets the requirements of this chapter;

(b) The foreign professional limited liability company is organized only for purposes for which a professional limited liability company organized under this chapter may be organized; and

(c) All the members and managers who practice in this state are qualified persons with respect to the professional limited liability company.

II. No foreign professional limited liability company shall be required to register to do business in this state unless it maintains an office in this state for the conduct of business or professional practice.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:17. Application for Certificate of Authority.

Application for registration to do business in this state by a foreign professional limited liability company shall be to the secretary of

state. The application for the purpose of rendering professional services shall include a statement that all the members and managers and those of its officers as are required by the laws of its state of formation and by RSA 304-D:12 are licensed in one or more states, territories of the United States or of the District of Columbia to render a professional service described in the statement of purpose of the professional limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:18. Revocation of Certificate of Authority.

I. The registration of a foreign professional limited liability company may be revoked by the secretary of state if the foreign professional limited liability company fails to comply with any provision of this chapter applicable to it.

II. Each licensing authority in this state shall certify to the secretary of state, from time to time, the names of all foreign professional limited liability companies which have given cause for revocation as provided in this chapter, together with the pertinent facts.

III. When the secretary of state receives certification from a licensing authority that a foreign professional limited liability company has given cause for revocation of registration, the secretary of state shall notify the foreign professional limited liability company of the receipt of the certification. The secretary of state shall send a copy of the notice sent to the foreign professional limited liability company to the licensing authority. The licensing authority shall give the foreign professional limited liability company at least 60 days to correct the noncompliance which was the cause for revocation of registration. If the licensing authority notifies the secretary of state after the end of the 60-day period that the noncompliance has not been corrected, the secretary of state shall revoke the registration of the foreign professional limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:19. Annual Report.

The annual report of each domestic professional limited liability company and each foreign professional limited liability company registered to do business in this state filed with the secretary of state under the law in this state applicable to limited liability companies shall include a statement that all members and managers are qualified persons with respect to the professional limited liability company.

Source.

1993, 313:1, eff. July 1, 1993.

304-D:20. Effect of RSA 304-C on This Chapter.

The provisions of RSA 304-C shall apply to professional limited liability companies, domestic and foreign, except to the extent that any such provision is inconsistent with any provision of this chapter.

Source.

1993, 313:1, eff. July 1, 1993.

CHAPTER 305-A

REGISTRATION OF FOREIGN PARTNERSHIPS

Section

305-A:1.	Registration.
305-A:2.	Application for Certificate of Authority.
305-A:2-a.	Changes.
305-A:2-b.	Suspension.
305-A:2-c.	Inactive List.
305-A:2-d.	Reregistration.
305-A:2-e.	Name.
305-A:2-f.	Resignation of Registered Agent.
305-A:3.	Noncompliance; Penalty.
305-A:4.	Effect.
305-A:5.	Withdrawal From State; Fee.
305-A:6.	Service of Process; How Made.
305-A:7.	On Secretary of State. [Repealed.]
305-A:8.	Service.

Effective date and applicability of chapter.

1965, 187:2, provided: "This act shall take effect sixty days after passage [June 23, 1965]. The provision of this chapter shall apply to all causes of action not otherwise barred by the applicable statute of limitations whether such cause of action has accrued prior to the effective date of this act [August 22, 1965] or shall accrue thereafter."

Cross References.

Business corporations generally, see RSA 293-A.
 Limited liability companies, see RSA 304-C.
 Partnerships generally, see RSA 304-A.
 Professional corporations, see RSA 294-A.
 Registration of foreign nonprofit corporations, see RSA 292:5-b.
 Service of process on foreign corporations generally, see RSA 293-A:15.10.

NOTES TO DECISIONS

Generally

This chapter, in its language and purpose, was modeled on former RSA 300, which required registration of foreign corporations. *Burnham & Company v. Kleinhans*, 114 N.H. 472, 322 A.2d 618, 1974 N.H. LEXIS 304 (1974).

305-A:1. Registration.

I. Every foreign partnership, desiring to do business within this state, shall pay a filing fee of \$50 to the secretary of state on the date of registration.

II. Every foreign partnership, desiring to do business within this state, shall continuously maintain in this state:

(a) A registered office which may or may not be the same as its place of business in the state; and

(b) A registered agent, which agent may be:

(1) An individual who resides in this state and whose business office is identical with the registered office; or

(2) A corporation organized or authorized under RSA 292, RSA 293-A, or RSA 294-A whose business office is identical with the registered office; or

(3) A limited liability company formed or authorized under RSA 304-C whose business office is identical with the registered office; or

(4) A limited liability partnership formed or authorized under RSA 304-A:44 whose business office is identical with the registered office.

Source.

1965, 187:1. 1973, 267:3. 1975, 96:1; 503:11. 1977, 25:1. 1986, 131:6. 1987, 349:2, 4, II; 393:2. 1990, 3:24. 1991, 67:5. 1993, 350:30, 41, VIII, eff. July 1, 1993. 1999, 293:7, eff. July 16, 1999. 2004, 248:55, eff. July 1, 2004.

Amendments

—2004. Rewritten to the extent that a detailed comparison would be impracticable.

—1999. Paragraph IV: Rewritten to the extent that a detailed comparison would be impracticable.

—1993. Paragraph I: Substituted "filing" for "registration" preceding "fee of" and "\$35" for "\$100 and an annual maintenance fee of \$200" thereafter, and deleted "the first business day of April following" preceding "the date of registration" and "and on the first business day of April thereafter; provided that a foreign partnership that has received its certificate of authority pursuant to RSA 305-A:2 between December 1 of the preceding year and April 1 shall not be required to pay the maintenance fee during that year" thereafter.

Paragraph III: Repealed.

—1991. Paragraph IV: Inserted "New Hampshire investment trust" following "corporation" in two places.

—1990. Paragraph I: Substituted "\$200" for "\$50" following "maintenance fee of".

—1987. Paragraph I: Chapter 349:2 deleted "including foreign limited partnerships" preceding "desiring".

Paragraph II: Chapter 349:2 deleted "including foreign limited partnerships" preceding "desiring" in the introductory clause.

Paragraph V: Chapter 393 substituted "an application for a certificate of authority of a foreign limited partnership" for "articles of incorporation" following "not accept".

Repealed by ch. 349:4, II.

—1986. Paragraph V: Added.

—1977. Paragraph IV: Added.

—1975. Chapter 96 designated the existing provisions of the section as pars. I-III, added the provision at the end of par. I, and inserted "for 2 consecutive years" following "failed" and "of their suspension as provided in RSA 305-A:2-b" following "hereunder" in par. III.

Chapter 503 substituted "\$100" for "fifty dollars" and "\$50" for "twenty-five dollars" in par. I.

—1973. Inserted "including foreign limited partnerships" following "foreign partnership" at the beginning of the section.

Severability

—1993 amendment. 1993, 350 was subject to a severability clause. See 1993, 350:40.

Applicability of amendment

—1993, 350:41 VIII amendment. 1993, 350:43, I, eff. July 1, 1993 provided in part: “[P]aragraph VIII of section 41 of this act [which repealed par. III of this section] ... shall apply to returns and taxes and reports and fees due on account of taxable periods ending on or after July 1, 1993. In the case of any business enterprise which has elected a 52-53 week taxable period under section 441(f) of the United States Internal Revenue Code [classified to 26 U.S.C.S. § 1 et seq.] and the fiscal year of which ends on the last day of the week nearest to June 30, 1993, the taxable period shall be deemed to have ended on June 30, 1993, for the purposes of this act.”

—1986 amendment. 1986, 131:7, eff. July 26, 1986, provided: “The provisions of this act shall not apply to limited partnerships and corporations in existence before the effective date of this act, until they offer for sale securities as defined in RSA 421-B:2, XX.”

Collection of accrued fees.

1993, 350:35, eff. July 1, 1993, provided: “Nothing in this act [which amended this section and RSA 304-B:64] shall be construed to excuse any fee liabilities accruing under RSA 304-B or 305-A as amended prior to and up to the date of their repeal. The secretary of state shall retain full authority to institute any authorized administrative actions and any other proceedings to require payment of and to collect said fees and penalties and interest where applicable, within the applicable statute of limitations.”

Cross References.

Filing of changes of name, registered office or agent, see RSA 305-A:2-a.

NOTES TO DECISIONS**Cited:**

Cited in *Burnham & Company v. Kleinhans*, 114 N.H. 472, 322 A.2d 618, 1974 N.H. LEXIS 304 (1974).

305-A:2. Application for Certificate of Authority.

All applications of foreign partnerships for authority to do business in this state shall be made on forms prescribed or furnished by and filed in the office of the secretary of state and shall be executed by a general partner of the partnership desiring to so register, and shall set forth: (a) the name of the partnership, the state under which laws it is formed, and the post office address with street and number, if any, of its principal office in such state; and (b) a statement registering an office and agent in this state and the address including street and number, if any, of such registered office in this state and the name of such registered agent in this state at such address. On compliance with the provisions of this section, the secretary of state shall forthwith issue a certificate of authority to do business in this state; copies of applications, certified by the secretary of state, shall be sufficient evidence thereof.

Source.

1965, 187:1, eff. Aug. 22, 1965.

Revision note.

At the end of the section, designated former clause (c), which began “On compliance with the provisions of this section ...”, as the present second sentence of the section for purposes of clarity and for conformity with the style of the remainder of the section.

305-A:2-a. Changes.

Any partnership which has changed its name, changed any of its general or limited partners, or changed its registered office or registered agent shall, within 30 days, file with the secretary of state a certificate of such change, signed and sworn to by a general partner of the partnership, and shall pay a filing fee of \$35 for a change of name or change of general or limited partners or a filing fee of \$15 for a change of registered office or registered agent.

Source.

1969, 87:1, 1975, 96:2, eff. June 21, 1975. 2004, 248:56, eff. July 1, 2004.

Amendments

—2004. Substituted “\$35 for a change of name or change of general or limited partners or a filing fee of \$15 for a change of registered office or registered agent” for “\$10”.

—1975. Inserted “changed any of its general or limited partners or” following “name”.

305-A:2-b. Suspension.

If any foreign partnership fails for 2 consecutive years to make the payments of fees required by this chapter, its right to do business in this state shall be suspended.

Source.

1969, 87:1, eff. June 9, 1969.

Revision note.

At the beginning of the section, substituted “foreign” for “such” preceding “partnership” for purposes of clarity.

305-A:2-c. Inactive List.

The secretary of state is hereby directed to remove from the active list of foreign partnerships authorized to do business in this state (1) the name of any such partnership whose right to do business herein has been suspended for failure to make payments by provisions of RSA 305-A:2-b, and (2) the name of any such partnership which may have withdrawn from doing business in this state but has failed to make a return to the secretary of state of such withdrawal and to pay the filing fee as required by RSA 305-A:5. The secretary of state shall keep on an inactive list the names of the foreign partnerships so removed from the active list which are no longer authorized to do business in this state.

Source.

1969, 87:1, eff. June 9, 1969.

Cross References.

Withdrawal of partnership from state generally, see RSA 305-A:5.

305-A:2-d. Reregistration.

If any foreign partnership removed from the active list of foreign partnerships authorized to do business in this state pursuant to RSA 305-A:2-c shall again wish to register to do business

in this state, it shall make a new application for such registration and pay the required fees for such registration.

Source.
1969, 87:1, eff. June 9, 1969.

Revision note.
At the beginning of the section, substituted “foreign partnership removed from the active list of foreign partnerships authorized to do business in this state pursuant to RSA 305-A:2-c” for “such foreign partnership” for purposes of clarity.

305-A:2-e. Name.

I. Except as authorized by paragraphs II and III, a foreign partnership name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(a) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(b) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(c) The fictitious name of another foreign corporation authorized to transact business in this state.

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(e) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

II. A foreign partnership may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in paragraph I, as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(a) The holder or holders of the name as described in paragraph I gives written consent to use the name that is not distinguishable from or likely to be confused with or mistaken for the name of the applying foreign partnership; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(b) The other entity consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying foreign partnership; or

(c) The applicant delivers to the secretary of state a certified copy of the final judgment of

a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this state.

III. A foreign partnership may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user foreign partnership:

- (a) Has merged with the other entity;
- (b) Has been formed by reorganization of the other entity; or
- (c) Has acquired all or substantially all of the assets, including the name, of the other entity.

IV. This chapter does not control the use of fictitious names.

V. Nothing in this section would prohibit the owner or owners of a trade name registered under RSA 349 to form a foreign partnership under the same name as the trade name.

Source.
1969, 87:1, eff. June 9, 1969. 2004, 248:57, eff. July 1, 2004.

Amendments
—2004. Rewritten to the extent that a detailed comparison would be impracticable.

305-A:2-f. Resignation of Registered Agent.

I. The registered agent of a foreign partnership authorized to do business in this state may resign his or her agency appointment by signing and delivering to the secretary of state for filing the original and one exact or conformed copy of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

II. The secretary of state shall mail the copy to the foreign partnership at its principal office address of record.

III. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Source.
2006, 316:15, eff. July 1, 2006.

305-A:3. Noncompliance; Penalty.

Any foreign partnership which refuses to comply with the requirements of this chapter may be restrained from further prosecution of business in this state by proceedings in equity brought by the attorney general in the county of Merrimack and shall be guilty of a misdemeanor.

Source.
1965, 187:1. 1973, 529:65, eff. at 11:59 p.m., Oct. 31, 1973.

Revision note.
At the beginning of the section, substituted “foreign” for “such” preceding “partnership” for purposes of clarity.

Amendments

—1973. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Classification of crimes, see RSA 625:9.

Sentences, see RSA 651.

305-A:4. Effect.

Failure to comply with the registration provisions of this chapter shall not affect the validity of any contract with a foreign partnership; but no action shall be maintained or recovery had in any of the courts of this state by any such foreign partnership so long as it fails to comply with the requirements of this chapter.

Source.

1965, 187:1, eff. Aug. 22, 1965.

Revision note.

Near the beginning of the section, substituted “a foreign” for “such” preceding “partnership” for purposes of clarity.

Cross References.

Application for certificate of authority, see RSA 305-A:2.

Requirement of registration, see RSA 305-A:1.

Suspension of right to do business, see RSA 305-A:2-b.

NOTES TO DECISIONS

1. Capacity of partnership to maintain action generally
2. Proof of incapacity—Generally
3. —Sufficiency of proof

1. Capacity of partnership to maintain action generally

Under this section, a partnership failing to register and pay an annual fee to the secretary of state as prescribed in RSA 305-A:1 cannot sue in the courts of the state. *Burnham & Company v. Kleinhans*, 114 N.H. 472, 322 A.2d 618, 1974 N.H. LEXIS 304 (1974).

2. Proof of incapacity—Generally

The incapacity under this section of a partnership to sue is an affirmative defense which defendant must plead and prove. *Burnham & Company v. Kleinhans*, 114 N.H. 472, 322 A.2d 618, 1974 N.H. LEXIS 304 (1974).

3. —Sufficiency of proof

The quantum of activity constituting “doing business” under this chapter so as to require registration as a prerequisite to maintaining an action in the courts of this state is greater than that which subjects a corporation to jurisdiction. *Burnham & Company v. Kleinhans*, 114 N.H. 472, 322 A.2d 618, 1974 N.H. LEXIS 304 (1974).

The fact that a foreign partnership which had instituted an action in the courts of this state had registered as a dealer in securities pursuant to RSA 421 did not, as a matter of law, require registration under this chapter, and bar its action for failure to do so, since a security dealer could be conducting exclusively interstate transactions; in order to require registration under this chapter, there must be proof that at least some of the plaintiff-partnership’s transactions were wholly intrastate. *Burnham & Company v. Kleinhans*, 114 N.H. 472, 322 A.2d 618, 1974 N.H. LEXIS 304 (1974).

A letter from the secretary of state indicating that plaintiff-partnership had not registered was not enough for defendant to prevail on motion to dismiss for failure to register. *Burnham & Company v. Kleinhans*, 114 N.H. 472, 322 A.2d 618, 1974 N.H. LEXIS 304 (1974).

305-A:5. Withdrawal From State; Fee.

A foreign partnership authorized to do business in the state may withdraw from the state

at any time. Such withdrawal shall become effective when such partnership shall have filed in the office of the secretary of state on forms prescribed or furnished by the secretary of state, signed for the partnership by a general partner thereof, a statement of withdrawal which shall set forth: (a) the name of such partnership, the state or county under the laws of which it is formed, and the post office address with street and number, if any, of its principal office in such state; (b) the address including street and number, if any, of its registered office in this state and the name of its registered agent in this state at such address; and (c) that it surrenders its authority to do business in this state. Such statement shall be accompanied by a filing fee of \$35.

Source.

1965, 187:1, eff. Aug. 22, 1965. 2004, 248:58, eff. July 1, 2004.

Revision note.

In clause (c), deleted “a statement” preceding “that it surrenders” for purposes of clarity.

Former clause (e), which began “shall be accompanied by a filing fee ...”, redesignated as the third sentence of the section for purposes of clarity and for conformity with the style and format of the remainder of the section.

Amendments

—2004. In the second sentence, substituted “the secretary of state” for “him” in the introductory clause, inserted “and” at the end of clause (b) and deleted clause (d), and in the third sentence, substituted “\$35” for “\$5”.

Cross References.

Placement of name of partnership withdrawing from doing business in state on inactive list, see RSA 305-A:2-c.

Reregistration of partnership after withdrawal, see RSA 305-A:2-d.

Service of process generally, see RSA 305-A:6.

Use of alternative methods of service of process, see RSA 305-A:8.

305-A:6. Service of Process; How Made.

I. Service of process in any suit, action, or proceeding or service of any notice or demand required or permitted by law to be served on a foreign partnership may be made on such partnership by service thereof on a registered agent of such partnership. Service of any such process or of any such notice or demand upon a registered agent as registered agent may be made:

(a) By leaving an attested copy of such process, notice, or demand in the registered office of the registered agent during regular business hours; or

(b) A foreign partnership may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign partnership at its principal office shown in its application for a certificate of authority, if the foreign partnership:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under RSA 305-A:5; or

- (3) Has had its certificate of authority suspended under RSA 305-A:2-b.
- II. Service is perfected under subparagraph I(b) at the earliest of:
- (a) The date the foreign partnership receives the mail; or
 - (b) The date shown on the return receipt, if signed on behalf of the foreign partnership; or
 - (c) Five days after its deposit in the United States Mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
- III. This section does not prescribe the only means, or necessarily the required means, of serving a foreign partnership.

Source.
1965, 187:1, eff. Aug. 22, 1965. 2004, 248:59, eff. July 1, 2004.

Amendments
—**2004.** Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.
Service of process on foreign corporations generally, see RSA 293-A:15.10.
Service of process on nonresident defendants generally, see RSA 510:4.
Service of process on partnership withdrawing from doing business in state, see RSA 305-A:5.
Use of alternative methods of service of process, see RSA 305-A:8.

NOTES TO DECISIONS

Cited:
Cited in *Sawtelle v. Farrell*, 70 F.3d 1381, 1995 U.S. App. LEXIS 33724 (1st Cir. 1995).

305-A:7. On Secretary of State.
[Repealed 2004, 248:62, III, eff. July 1, 2004.]

Former section(s).
Former RSA 305-A:7, which was derived from 1965, 187:1; 1975, 96:3; and 1988, 62:3, related to serving process on secretary of state.

305-A:8. Service.
The method of service provided by this chapter is not exclusive and service on foreign partnerships may be made in any other manner provided by law.

Source.
1965, 187:1, eff. Aug. 22, 1965.

Revision note.
In the middle of the section, substituted “foreign” for “such” preceding “partnerships” for purposes of clarity.

Cross References.
Service of process generally, see RSA 305-A:5-7.

TITLE XXXI

TRADE AND COMMERCE

CHAPTER 349

TRADE NAMES

Section	
349:1.	Registration; Generally.
349:2.	Withdrawal or Addition of Partner; Discontinuance of Business.
349:3.	Evidence.
349:4.	Nonjoinder as Defendant.
349:5.	Registration; Procedure.
349:6.	Effect of Registration.
349:7.	Record; Fees.
349:8.	Reregistration.
349:9.	Penalty.
349:10.	Fraudulent Registration; Civil Rights.
349:11.	Prior Rights.
349:12.	Names. [Repealed.]

Cross References.

Registration of brands and markings for containers, see RSA 351.
Trademarks, see RSA 350-A.

NOTES TO DECISIONS

Cited:

Cited in *Bogosian v. Fine*, 99 N.H. 340, 111 A.2d 190, 1955 N.H. LEXIS 20 (1955).

RESEARCH REFERENCES

ALR.

Commercial competitor's truthful denomination of his goods as copies of designs of another, using designer's name, as trademark infringement, unfair competition, or the like. 1 A.L.R.3d 760.

Geographical extent of protection of word or symbol under doctrine of secondary meaning. 41 A.L.R.3d 434.

Incorporation of company under particular name as creating exclusive right to such name. 68 A.L.R.3d 1168.

Liability of transferor of business operated under trade-name for supplies furnished to successor by one without notice of transfer. 70 A.L.R.3d 1250.

Right of charitable or religious association or corporation to protection against use of same or similar name of another. 37 A.L.R.3d 277.

Trade dress simulation of cosmetic products as unfair competition. 86 A.L.R.3d 505.

Use of "family name" by corporation as unfair competition. 72 A.L.R.3d 8.

349:1. Registration; Generally.

I. Every sole proprietor doing business in this state under any name other than the sole proprietor's own name, and every partnership, trust or association doing business in this state shall register the trade name of such business, trust or association in the manner provided in RSA 349:5 and 349:6.

II. The provisions of this chapter shall not apply to corporations organized under RSA 292, 293-A, 301 and 301-A, foreign corporations reg-

istered under RSA 292, 293-A, 301 and 301-A, foreign partnerships registered under RSA 305-A, limited liability companies and foreign limited liability companies registered under RSA 304-C, registered limited liability partnerships or foreign registered liability partnerships registered under RSA 304-A, limited partnerships or foreign limited partnerships registered under RSA 304-B or New Hampshire investment trusts registered under RSA 293-B except as such holders of the registrations as described in this paragraph may be doing business under trade names other than the names under which they are registered.

III. The provisions of this chapter shall not apply to rating organizations or insurers which engage in joint underwriting or joint reinsurance which are referred to in, and subject to, the provisions of RSA 413.

IV. (a) Except as authorized by subparagraphs (b) and (c), a trade name, based upon the records of the secretary of state, shall be distinguishable from, and not the same as, or likely to be confused with or mistaken for:

(1) The name of an entity incorporated, authorized, formed, or registered to do business in this state under RSA 292, RSA 293-A, RSA 293-B, RSA 294-A, RSA 301, RSA 301-A, RSA 304-A, RSA 304-B, RSA 304-C, RSA 305-A, or RSA 349.

(2) A name reserved under RSA 293-A, RSA 293-B, RSA 304-A, RSA 304-B, or RSA 304-C.

(3) The fictitious name of another foreign corporation authorized to transact business in this state.

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof.

(5) The name of any political party recognized under RSA 652:11, unless written consent is obtained from the authorized representative of the political organization.

(b) An applicant may apply to the secretary of state for authorization to use a name that is not distinguishable from, or is the same as, or likely to be confused with or mistaken for one or more of the names described in subparagraph (a), as determined from review of the records of the secretary of state. The secretary of state shall authorize use of the name applied for if:

(1) The holder or holders of the name as described in subparagraph (a) gives written consent to use the name that is not distinguishable from or likely to be confused with or mistaken for the name of the applying trade name; or if the name is the same, one or more words are added to the name to make the new name distinguishable from the other name; or

(2) The other entity consents to the use in writing and submits an undertaking in a

form satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the same as, or likely to be confused with or mistaken for the name of the applying trade name; or

(3) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(c) An applicant may use the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, authorized, formed, or registered to transact business in this state and the proposed user corporation has acquired all or substantially all of the assets, including the name, of the other entity.

(d) No person shall use the term "farmers' market" in a trade name unless such use conforms to the definition in RSA 21:34-a, V. A person having a lawfully registered trade name including the term "farmers' market" on the effective date of this subparagraph shall be exempt from the prohibition established in this subparagraph.

Source.

GS 106:1. GL 117:1. PS 121:1. 1919, 57:1. PL 155:1. RL 186:1. 1949, 119:1. RSA 349:1, 2. 1955, 284:1, par. 1. 1991, 67:6, eff. May 9, 1991. 1996, 212:12, eff. Aug. 9, 1996. 2003, 150:12, eff. Jan. 1, 2004. 2004, 248:60, eff. July 1, 2004. 2007, 210:1, eff. August 24, 2007.

References in text.

Reference in par. III to "RSA 413" was probably meant to be "RSA 412" as RSA 413 was repealed by 2003, 150:14, I, effective January 1, 2004.

Revision note.

In the second sentence, substituted "293-A" for "294". RSA 294, relating to business corporations, was repealed by 1981, 557:2, eff. Feb. 1, 1982. RSA 293-A, relating to business corporations, was enacted by 1981, 557:1, eff. Feb. 1, 1982.

Amendments

- 2007. Paragraph IV(d): Added.
- 2004. Paragraphs III–V: Rewritten as pars. III–IV.
- 2003. Paragraph V: Substituted "RSA 412" for "RSA 413".
- 1996. Rewritten to the extent that a detailed comparison would be impracticable.
- 1991. Inserted "New Hampshire investment trust" following "corporation" and "or New Hampshire investment trust" preceding "in the manner" in the first sentence, "or to New Hampshire investment trusts organized under RSA 293-B" following "and 301", "or New Hampshire investments trusts" preceding "may be doing business", "or the business of a New Hampshire investment trust" thereafter and "or New Hampshire investment trust" following "name of the corporation" in the second sentence, and "New Hampshire investment trust" following "corporation" in two places in the third sentence.

—1955. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Remedies for improper use of registered name, see RSA 349:10, 11.

NOTES TO DECISIONS

Cited:

Cited in *Tucker v. Adams*, 63 N.H. 361, 1885 N.H. LEXIS 30 (1885); *May v. Goodyear Tire & Rubber Co.*, 10 F. Supp. 249, 1935 U.S. Dist. LEXIS 1659 (D.N.H. 1935); *Jodoin v. Barody*, 95 N.H. 154, 59 A.2d 343, 1948 N.H. LEXIS 203 (1948); *Blastos v. Humphrey*, 112 N.H. 352, 296 A.2d 918, 1972 N.H. LEXIS 218 (1972); *Auto Body Specialists, Inc. v. Vallee*, 127 N.H. 382, 500 A.2d 372, 1985 N.H. LEXIS 437 (1985); *Knox Leasing v. Turner*, 132 N.H. 68, 562 A.2d 168, 1989 N.H. LEXIS 74 (1989); *Marceau v. Concord Heritage Life Ins. Co.*, 149 N.H. 216, 818 A.2d 1264, 2003 N.H. LEXIS 28 (2003).

349:2. Withdrawal or Addition of Partner; Discontinuance of Business.

Whenever any member of such partnership or association withdraws therefrom, the partnership or association shall, within 10 days, file in the office of the secretary of state a certificate signed by all members, including the withdrawing member, setting forth the fact of such withdrawal, together with the date thereof. Whenever a new member is added to such a partnership or association or joins a sole proprietorship holding a registered trade name, the new member and previous member or members shall, within 10 days, file in the office of the secretary of state a certificate signed by all members, including the new member, setting forth the facts of such addition, together with the date thereof. If any person, partnership or association to whom the provisions of this chapter apply shall cease to do business, a certificate setting forth such fact and the date of such discontinuance shall be filed with the secretary of state within 30 days thereafter. Such certificate shall be signed by the members of such partnership or association, or by any sole proprietor, or by his or their executors or administrators.

Source.

1919, 57:2, 3. PL 155:2, 4. RL 186:2, 4. RSA 349:3, 5. 1955, 284:1 par. 2. 1985, 339:11. 1987, 393:9, eff. July 25, 1987.

Amendments

—1987. Deleted "and sworn to" following "signed" in the first, second and fourth sentences.

—1985. Rewritten to the extent that a detailed comparison would be impracticable.

—1955. Rewritten to the extent that a detailed comparison would be impracticable.

349:3. Evidence.

Until a certificate as specified in RSA 349:2 is filed, such failure to file shall be prima facie evidence that withdrawal or addition of a partner or discontinuance of partnership has not occurred.

Source.

1919, 57:2. PL 155:3. RL 186:3. RSA 349:4. 1955, 284:1 par. 3. 1985, 339:12, eff. June 14, 1985.

Amendments

—1985. Rewritten to the extent that a detailed comparison would be impracticable.

—1955. Rewritten to the extent that a detailed comparison would be impracticable.

RESEARCH REFERENCES

New Hampshire Trial Bar News.

For Article, "Presumptions in New Hampshire Law—A Guide Through the Impenetrable Jungle (Part 1)," see 10 N.H. Trial Bar News 55, 60 n.82 (Winter 1990).

349:4. Nonjoinder as Defendant.

No action commenced against any such person, partnership or association or any member thereof, upon any cause of action growing out of their affairs, transactions or business, shall be abated, nor shall any attachment made upon the writ in such action be affected, by reason of the nonjoinder of any member of such partnership or association or individual, who has not been included in such certificates.

Source.
GS 106:2. GL 117:2. PS 121:2. 1919, 57:6. PL 155:9. RL 186:9. RSA 349:10. 1955, 284:1 par. 4, eff. July 1, 1955.

Amendments
—1955. Rewritten to the extent that a detailed comparison would be impracticable.

NOTES TO DECISIONS

Cited:
Cited in *Tucker v. Adams*, 63 N.H. 361, 1885 N.H. LEXIS 30 (1885); *Hoyt v. Horst*, 105 N.H. 380, 201 A.2d 118, 1964 N.H. LEXIS 84 (1964).

349:5. Registration; Procedure.

Every person, proprietorship, partnership, or association, as defined in RSA 349:1, engaged in the conduct of any business, enterprise, venture, or activity within the state of New Hampshire under a trade name, firm, or style shall, subject to the limitations hereinafter set forth, file in the office of the secretary of state a certificate signed by such person, proprietorship, or by the members of such partnership or association stating the name under which the business is to be conducted, the principal place of said business, and a brief description of the kind of business to be carried on with the names and addresses of the principal parties engaged therein. Said registration shall further state the date of organization of said business.

Source.
GS 106:1. GL 117:1. PS 121:1. 1919, 57:1. PL 155:1. RL 186:1. RSA 349:1. 1955, 284:1 par. 5. 1987, 393:10, eff. July 25, 1987. 2004, 248:61, eff. July 1, 2004.

Amendments
—2004. Deleted "and any limitation of time after which said business shall be no longer conducted" following "said business" in the second sentence.

—1987. Deleted "and sworn to" following "signed" in the first sentence.

—1955. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.
Remedies for improper use of registered name, see RSA 349:10, 11.

NOTES TO DECISIONS

Cited:
Cited in *Auto Body Specialists, Inc. v. Vallee*, 127 N.H. 382, 500 A.2d 372, 1985 N.H. LEXIS 437 (1985).

349:6. Effect of Registration.

Registration in accordance with the requirements of RSA 349:5 and the reservation of the name, firm or style thereby accomplished shall be effective upon filing and continue in force and effect upon payment of the requisite fees as provided in RSA 349:7 for a period of 5 years after said date of filing in the absence of earlier withdrawal or discontinuance, notice of which shall be given in accordance with the provisions of RSA 349:2.

Source.
1955, 284:1 par. 6. 1985, 339:13, eff. June 14, 1985.

Amendments
—1985. Substituted "5" for "10" preceding "years".

Cross References.
Registration generally, see RSA 349:1.

349:7. Record; Fees.

There shall be paid to the secretary of state for filing of registration and issuance of certificate of registration a fee of \$50. Upon payment of said fee, the secretary of state shall deliver to the person filing and registering such trade name a certificate of registration under his signature and state seal showing the name and address of the person or persons claiming ownership of the trade name, the nature of the business thereby reserved and described and a receipt for the payment of said fee. The fee for renewal of any registration shall be \$50. The fee for notice of discontinuance, addition, or withdrawal shall be \$10. The secretary shall keep a suitable file or record of all such certificates. He shall prepare blanks for such certificates, and shall, upon request, furnish such blanks to persons, partnerships, or associations.

Source.
1919, 57:4. PL 155:5. RL 186:5. 1949, 265:10. RSA 349:6. 1955, 59:2; 284:1 par. 7. 1969, 289:7. 1977, 563:36. 1985, 339:17. 1989, 408:71, eff. Aug. 4, 1989.

Amendments
—1989. Substituted "\$50" for "\$40" in the first and third sentences and "\$10" for "\$2" in the fourth sentence.

—1985. Inserted "addition" following "discontinuance" in the fourth sentence.

—1977. Substituted "\$40" for "twenty dollars" in the first and third sentences and "\$2" for "two dollars" in the fourth sentence.

—1969. Substituted "twenty dollars" for "ten dollars" in the first and third sentences.

—1955. Rewritten to the extent that a detailed comparison would be impracticable.

Severability

—1989 amendment. 1989, 408 was subject to a severability clause. See 1989, 408:109.

—1977

1977, 563:36 was subject to a severability clause. See 1977, 563:100.

349:8. Reregistration.

Every person, proprietorship, partnership or association registered in accordance with the requirements of this subdivision shall be required to reregister at the time of the expiration of the 5-year period set forth in RSA 349:6. The secretary of state shall, at least 6 months prior to the expiration of the term of registration, forward notice of the requirement of renewal together with a proper form for such renewal. A second such notice shall be mailed at least 30 days prior to expiration. Unless within 30 days after expiration said registration is renewed, the registration shall be discontinued and the name thereby abandoned and free. The secretary of state shall cancel from his register all registrations more than 5 years old and not renewed in accordance with the provisions of this section.

Source.

1955, 59:2; 284:1 par. 8. 1985, 339:14, eff. June 14, 1985.

Amendments

—1985. Substituted “5-year” for “10-year” preceding “period” in the first sentence and “5” for “10” preceding “years” in the fourth sentence, rewrote the third sentence, and deleted the fifth through seventh sentences.

349:9. Penalty.

Any person who fails to comply with the provisions of the preceding sections of this chapter shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.

Source.

1919, 57:6. PL 155:8. RL 186:8. RSA 349:9. 1955, 284:1 par. 9. 1973, 530:51, eff. at 11:59 p.m., Oct. 31, 1973.

Amendments

—1973. Rewritten to the extent that a detailed comparison would be impracticable.

—1955. Inserted “the preceding sections of” preceding “this chapter”.

Cross References.

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

349:10. Fraudulent Registration; Civil Rights.

Any person who shall for himself, or on behalf of any other person, procure the filing and registration of any trade name in the office of the secretary of state, under the provisions hereof, by making any false or fraudulent rep-

resentations or declarations, verbally, or in writing, or by any fraudulent means, shall be liable to pay all damages sustained in consequence of any such filing, to be recovered by or on behalf of the party injured thereby, in any court having jurisdiction, and shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Any person, proprietorship, partnership or association who has adopted and registered a trade name as aforesaid may proceed by suit to enjoin the use, display, or interference of any other firm, person, proprietorship or association making use thereof, and all courts of competent jurisdiction may grant injunctions to restrain such interference, use, display, or activity, as may be by the said court deemed just and reasonable, and may require the defendants to pay to such person all profits derived from such wrongful interference, use, display or activity; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed.

Source.

1955, 284:1 par. 10. 1973, 528:243, eff. at 11:59 p.m., Oct. 31, 1973.

Amendments

—1973. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

NOTES TO DECISIONS

Cited:

Cited in *Blastos v. Humphrey*, 112 N.H. 352, 296 A.2d 918, 1972 N.H. LEXIS 218 (1972).

349:11. Prior Rights.

Nothing herein shall adversely affect the rights or the enforcement of rights in trade names acquired in good faith at any time at common law.

Source.

1955, 284:1 par. 10-a, eff. July 1, 1955.

NOTES TO DECISIONS

Generally

Common law rights are specifically left intact under this section. *Puritan Furniture Corp. v. Comarc, Inc.*, 519 F. Supp. 56, 1981 U.S. Dist. LEXIS 13913 (D.N.H. 1981).

Cited:

Cited in *President and Trustees of Colby College v. Colby Junior College for Women*, 359 F. Supp. 571, 1973 U.S. Dist. LEXIS 13390 (D.N.H. 1973); *President and Trustees of Colby College v. Colby College-New Hampshire*, 374 F. Supp. 1141, 1974 U.S. Dist. LEXIS 8665 (D.N.H. 1974).

349:12. Names.

[Repealed 1998, 106:3, eff. August 1, 1998.]

Former section(s).

Former RSA 349:12, which was derived from 1985, 339:15, related to the grandfathering of trade names registrations.

CHAPTER 350-A

MODEL STATE TRADEMARK ACT

Section	
350-A:1.	Definitions.
350-A:2.	Registrability.
350-A:3.	Application for Registration.
350-A:4.	Certificate of Registration.
350-A:5.	Duration and Renewal.
350-A:6.	Assignment.
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350-A:8.	Cancellation.
350-A:9.	Classification.
350-A:10.	Fraudulent Registration.
350-A:11.	Infringement.
350-A:12.	Injury to Business Reputation; Dilution.
350-A:13.	Remedies.
350-A:14.	Common Law Rights.
350-A:15.	Severability.

Cross References.

Registration of brands and marking for containers, see RSA 351.
Trade names, see RSA 349.

RESEARCH REFERENCES

ALR.

Commercial competitor's truthful denomination of his goods as copies of designs of another, using designer's name, as trademark infringement, unfair competition, or the like. 1 A.L.R.3d 760.

350-A:1. Definitions.

- I. The term "trademark" as used herein means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.
- II. The term "service mark" as used herein means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.
- III. The term "mark" as used herein includes any trademark or service mark entitled to registration under this chapter whether registered or not.
- IV. The term "trade name" means a word, name, symbol, device or any combination thereof used by a person to identify his business, vocation or occupation and distinguish it from the business, vocation or occupation of others.
- V. The term "person" as used herein means any individual, firm, partnership, corporation, association, union or other organization.
- VI. The term "applicant" as used herein embraces the person filing an application for registration of a trademark under this chapter, his legal representatives, successors or assigns.

- VII. The term "registrant" as used herein embraces the person to whom the registration of a trademark under this chapter is issued, his legal representatives, successors or assigns.
- VIII. For the purposes of this chapter, a trademark shall be deemed to be "used" in this state (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in the state, and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.
- Source.
1969, 448:1, eff. Sept. 1, 1969.
- 350-A:2. Registrability.
- A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:
- I. Consists of or comprises immoral, deceptive or scandalous matter; or
- II. Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or
- III. Consists of or comprises, the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or
- IV. Consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or
- V. Consists of a mark which, (a) when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or, (b) when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, or (c) is primarily merely a surname; provided, however, that nothing in this paragraph shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the 5 years next preceding the date of the filing of the application for registration; or
- VI. Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

Source.
1969, 448:1, eff. Sept. 1, 1969.

Cross References.

Classifications of goods and services, see RSA 350-A:9.

NOTES TO DECISIONS**Cited:**

Cited in *Blastos v. Humphrey*, 112 N.H. 352, 296 A.2d 918, 1972 N.H. LEXIS 218 (1972).

RESEARCH REFERENCES**ALR.**

Reverse confusion doctrine under state trademark law. 114 A.L.R.5th 129.

350-A:3. Application for Registration.

Subject to the limitations set forth in this chapter, any person who adopts and uses a mark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth, but not limited to, the following information:

I. The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation,

II. The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall,

III. The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business, and

IV. A statement that the applicant is the owner of the mark and that no other person has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor. The application shall be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying. The application shall be accompanied by a specimen or facsimile of such mark in triplicate. The application for registration shall be accompanied by a filing fee of \$ 50 payable to the secretary of state.

Source.

1969, 448:1. 1977, 563:37. 1990, 3:27, eff. Feb. 20, 1990.

Amendments

—1990. Paragraph IV: Substituted “\$ 50” for “\$ 20” in the fourth sentence and made other minor stylistic changes throughout the paragraph.

—1977. Substituted “\$ 20” for “ten dollars” in the last sentence.

Severability of enactment.

1977, 563:37 was subject to a severability clause. See 1977, 563:100.

Cross References.

Classification of goods and services, see RSA 350-A:9.
Registrability of marks, see RSA 350-A:2.

NOTES TO DECISIONS**Cited:**

Cited in *Auto Body Specialists, Inc. v. Vallee*, 127 N.H. 382, 500 A.2d 372, 1985 N.H. LEXIS 437 (1985).

RESEARCH REFERENCES**New Hampshire Bar Journal.**

For article, “Trademarks and Tradenames: A Practical Overview of Registration, Rights and Assignment,” see 34 N.H.B.J. 41 (1993).

350-A:4. Certificate of Registration.

I. Upon compliance by the applicant with the requirements of this chapter, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

II. Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceedings in any court of this state.

Source.

1969, 448:1, eff. Sept. 1, 1969.

Cross References.

Assignment of registration, see RSA 350-A:6.

Cancellation of registration, see RSA 350-A:8.

Liability of persons procuring registrations by means of false or fraudulent representations or declarations, see RSA 350-A:10.

Remedies for wrongful use of registered trademarks, see RSA 350-A:13, 14.

350-A:5. Duration and Renewal.

I. Registration of a mark hereunder shall be effective for a term of 10 years from the date of registration and, upon application filed within 6 months prior to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed for a like term. A renewal fee of \$ 50, payable to the secretary of state, shall accompany the application for renewal of the registration.

II. A mark registration may be renewed for successive periods of 10 years in like manner.

III. The secretary of state shall notify registrants of marks hereunder of the necessity of renewal within the year next preceding the expiration of the 10 years from the date of

registration, by writing to the last known address of the registrants.

IV. Any registration in force on September 1, 1969, shall expire 10 years from the date of registration or of the last renewal thereof or one year after September 1, 1969, whichever is later, and may be renewed by filing an application with the secretary of state on a form furnished by him and paying the aforementioned renewal fee therefor within 6 months prior to the expiration of the registration.

V. All applications for renewals under this chapter, whether of registrations made under this chapter or of registrations effected under any prior act, shall include a statement that the mark is still in use in this state.

VI. The secretary of state shall within 6 months after September 1, 1969, notify all registrants of marks under previous acts of the date of expiration of such registrations unless renewed in accordance with the provisions of this chapter, by writing to the last known address of the registrants.

Source.
1969, 448:1. 1990, 3:28, eff. Feb. 20, 1990.

Revision note.
For purposes of clarity, substituted "September 1, 1969" for "the date on which this chapter shall become effective" and "the effective date of this chapter" in par. IV and for "the effective date of this chapter" in par. VI.

Amendments
—1990. Paragraph I: Substituted "\$ 50" for "\$ 10" in the second sentence.

Cross References.
Cancellation of registration, see RSA 350-A:8.

RESEARCH REFERENCES

New Hampshire Bar Journal.
For article, "Trademarks and Tradenames: A Practical Overview of Registration, Rights and Assignment," see 34 N.H.B.J. 41 (1993).

350-A:6. Assignment.

Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary of state upon the payment of a fee of \$ 10, payable to the secretary of state who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary of state within 3 months after the date thereof or prior to such subsequent purchase.

Source.
1969, 448:1, eff. Sept. 1, 1969.

Cross References.
Duration of registrations generally, see RSA 350-A:5.

RESEARCH REFERENCES

New Hampshire Bar Journal.
For article, "Trademarks and Tradenames: A Practical Overview of Registration, Rights and Assignment," see 34 N.H.B.J. 41 (1993).

ALR.
What constitutes "famous mark" for purposes of federal Trademark Dilution Act, 15 U.S.C.S. § 1125(c), which provides remedies for dilution of famous marks. 165 A.L.R. Fed 625.

350-A:7. Records.

The secretary of state shall keep for public examination a record of all marks registered or renewed under this chapter.

Source.
1969, 448:1, eff. Sept. 1, 1969.

350-A:8. Cancellation.

The secretary of state shall cancel from the register:

I. After September 1, 1970, all registrations under prior acts which are more than 10 years old and not renewed in accordance with this chapter;

II. Any registration concerning which the secretary of state shall receive a voluntary request for cancellation thereof from the registrant or the assignee of the record;

III. All registrations granted under this chapter and not renewed in accordance with the provisions hereof;

IV. Any registration concerning which a court of competent jurisdiction shall find

(a) that the registered mark has been abandoned,

(b) that the registrant is not the owner of the mark,

(c) that the registration was granted improperly,

(d) that the registration was obtained fraudulently.

V. When a court of competent jurisdiction shall order cancellation of a registration on any ground.

Source.
1969, 448:1, eff. Sept. 1, 1969.

Revision note.
In par. I, substituted "September 1, 1970" for "one year from the effective date of this chapter" for purposes of clarity.

Cross References.
Duration and renewal of registration generally, see RSA 350-A:5.

RESEARCH REFERENCES

New Hampshire Bar Journal.
For article, "Trademarks and Tradenames: A Practical

Overview of Registration, Rights and Assignment," see 34 N.H.B.J. 41 (1993).

ALR.

Reverse confusion doctrine under state trademark law. 114 A.L.R.5th 129.

350-A:9. Classification.

The following general classes of goods and services are established for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used comprised in a single class, but in no event shall a single application include goods or services upon which the mark is being used which fall within different classes of goods or services.

The said classes are as follows:

I. Goods:

- (1) Raw or partly prepared materials
- (2) Receptacles
- (3) Baggage, animal equipments, portfolios, and pocketbooks
- (4) Abrasives and polishing materials
- (5) Adhesives
- (6) Chemicals and chemical compositions
- (7) Cordage
- (8) Smokers' articles, not including tobacco products
- (9) Explosives, firearms, equipments, and projectiles
- (10) Fertilizers
- (11) Inks and inking materials
- (12) Construction materials
- (13) Hardware and plumbing and steam-fitting supplies
- (14) Metals and metal castings and forgings
- (15) Oils and greases
- (16) Paints and painters' materials
- (17) Tobacco products
- (18) Medicines and pharmaceutical preparations
- (19) Vehicles
- (20) Linoleum and oiled cloth
- (21) Electrical apparatus, machines, and supplies
- (22) Games, toys, and sporting goods
- (23) Cutlery, machinery, and tools, and parts thereof
- (24) Laundry appliances and machines
- (25) Locks and safes
- (26) Measuring and scientific appliances
- (27) Horological instruments
- (28) Jewelry and precious-metal ware
- (29) Brooms, brushes, and dusters
- (30) Crockery, earthenware, and porcelain
- (31) Filters and refrigerators
- (32) Furniture and upholstery
- (33) Glassware
- (34) Heating, lighting, and ventilating apparatus

(35) Belting, hose, machinery packing, and non-metallic tires

- (36) Musical instruments and supplies
- (37) Paper and stationery
- (38) Prints and publications
- (39) Clothing
- (40) Fancy goods, furnishings, and notions
- (41) Canes, parasols, and umbrellas
- (42) Knitted, netted and textile fabrics, and substitutes therefor
- (43) Thread and yarn
- (44) Dental, medical, and surgical appliances
- (45) Soft drinks and carbonated waters
- (46) Foods and ingredients of foods
- (47) Wines
- (48) Malt beverages and liquors
- (49) Distilled alcoholic liquors
- (50) Merchandise not otherwise classified
- (51) Cosmetics and toilet preparations
- (52) Detergents and soaps

II. Services:

- (100) Miscellaneous
- (101) Advertising and business
- (102) Insurance and financial
- (103) Construction and repair
- (104) Communications
- (105) Transportation and storage
- (106) Material treatment
- (107) Education and entertainment

Source.

1969, 448:1, eff. Sept. 1, 1969.

Cross References.

Registrability of marks generally, see RSA 350-A:2.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, "Trademarks and Tradenames: A Practical Overview of Registration, Rights and Assignment," see 34 N.H.B.J. 41 (1993).

350-A:10. Fraudulent Registration.

Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any mark in the office of the secretary of state under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

Source.

1969, 448:1, eff. Sept. 1, 1969.

Cross References.

Remedies for improper use of registered trademarks generally, see RSA 350-A:13, 14.

RESEARCH REFERENCES

ALR.

Initial interest confusion doctrine under Lanham Trademark Act. 183 A.L.R. Fed. 553.

350-A:11. Infringement.

Subject to the provisions of RSA 350-A:13, any person who shall:

I. Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

II. Reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services; shall be liable to a civil action by the owner of such registered mark for any or all of the remedies provided in RSA 350-A:12, except that under paragraph II the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

Source.
1969, 448:1, eff. Sept. 1, 1969.

Cross References.
Forgery, see RSA 638:1.

NOTES TO DECISIONS

Cited:
Cited in Optical Alignment Sys. & Inspection Servs. v. Alignment Servs. of N. Am., Inc., 909 F. Supp. 58, 1995 U.S. Dist. LEXIS 16258 (D.N.H. 1995).

RESEARCH REFERENCES

New Hampshire Bar Journal.
For article, "Trademarks and Tradenames: A Practical Overview of Registration, Rights and Assignment," see 34 N.H.B.J. 41 (1993).

ALR.
Initial interest confusion doctrine under Lanham Trademark Act. 183 A.L.R. Fed. 553.
Parody as trademark or tradename dilution or infringement. 179 A.L.R. Fed. 181.
World Wide Web Domain as Violating State Trademark Protection Statute or State Unfair Trade Practices Act. 96 A.L.R.5th 1.

350-A:12. Injury to Business Reputation; Dilution.

Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under this chapter, or a mark valid at common law, or a trade name valid at common law, shall be a ground for injunctive relief not-

withstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services.

Source.
1969, 448:1, eff. Sept. 1, 1969.

NOTES TO DECISIONS

Cited:
Cited in President and Trustees of Colby College v. Colby College-New Hampshire, 374 F. Supp. 1141, 1974 U.S. Dist. LEXIS 8665 (D.N.H. 1974); Auto Body Specialists, Inc. v. Vallee, 127 N.H. 382, 500 A.2d 372, 1985 N.H. LEXIS 437 (1985).

RESEARCH REFERENCES

New Hampshire Bar Journal.
For article, "Trademarks and Tradenames: A Practical Overview of Registration, Rights and Assignment," see 34 N.H.B.J. 41 (1993).

350-A:13. Remedies.

I. Any owner of a mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed.

II. The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

Source.
1969, 448:1, eff. Sept. 1, 1969.

Cross References.
Forgery, see RSA 638:1.
Infringement, see RSA 350-A:11.
Injury to business reputation, see RSA 350-A:12.

NOTES TO DECISIONS

Cited:
Cited in Blastos v. Humphrey, 112 N.H. 352, 296 A.2d 918, 1972 N.H. LEXIS 218 (1972).

RESEARCH REFERENCES

New Hampshire Bar Journal.
For article, "Trademarks and Tradenames: A Practical Overview of Registration, Rights and Assignment," see 34 N.H.B.J. 41 (1993).

350-A:14. Common Law Rights.

Nothing herein shall adversely affect the rights or the enforcement of rights in marks

acquired in good faith at any time at common law.

Source.

1969, 448:1, eff. Sept. 1, 1969.

NOTES TO DECISIONS

Generally

Common law rights are specifically left intact under this section. *Puritan Furniture Corp. v. Comarc, Inc.*, 519 F. Supp. 56, 1981 U.S. Dist. LEXIS 13913 (D.N.H. 1981).

Cited:

Cited in *President and Trustees of Colby College v. Colby Junior College for Women*, 359 F. Supp. 571, 1973 U.S. Dist. LEXIS 13390 (D.N.H. 1973).

350-A:15. Severability.

If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby.

Source.

1969, 448:1, eff. Sept. 1, 1969.

Revision note.

Substituted "this chapter" for "this act" for purpose of clarity.

CHAPTER 350-B

UNIFORM TRADE SECRETS ACT

Section

350-B:1.	Definitions.
350-B:2.	Injunctive Relief.
350-B:3.	Damages.
350-B:4.	Attorneys' Fees.
350-B:5.	Preservation of Secrecy.
350-B:6.	Statute of Limitations.
350-B:7.	Effect on Other Law.
350-B:8.	Uniformity of Application and Construction.
350-B:9.	Short Title.

Severability of enactment.

1989, 220:1, was subject to a severability clause. See 1989, 220:2.

Applicability of enactment.

1989, 220:3, eff. Jan. 1, 1990, provided that section 1 of the act, which added this chapter, shall apply to misappropriations of trade secrets occurring on or after Jan. 1, 1990 and shall not apply to misappropriation or continuing misappropriations of trade secrets occurring or beginning prior to Jan. 1, 1990.

350-B:1. Definitions.

As used in this chapter, unless the context requires otherwise:

I. "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

II. "Misappropriation" means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(1) Used improper means to acquire knowledge of the trade secret; or

(2) At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it; or acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(3) Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

III. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

IV. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Source.

1989, 220:1, eff. Jan. 1, 1990.

NOTES TO DECISIONS

1. Trade secret
2. Insufficient efforts to maintain secrecy

1. Trade secret

Claims under this chapter would not be decided on a motion to dismiss, since statutory requirements that information not be readily ascertainable to competitors or public generally, and that information be the subject of reasonable efforts to maintain its secrecy, both required factual judgment which was properly for the jury, not the court. *Anderson v. Century Prods. Co.*, 943 F. Supp. 137, 1996 U.S. Dist. LEXIS 19740 (D.N.H. 1996).

2. Insufficient efforts to maintain secrecy

Denial of an employer's motion to set aside the jury's verdict in favor of the employees and competitors in the employer's claim for misappropriation of trade secrets, under the New Hampshire Uniform Trade Secrets Act, RSA ch. 350-B, was affirmed because a reasonable jury could find from the evidence that the employer's customer information, which the employees took with them when they left the employer, was not subject to reasonable efforts to maintain its secrecy where the documents containing customer information, including customers' current interest rates, were never marked confidential or trade secret, that those documents were kept in an attic for many years, and that the loan originators were not consistently and uniformly given instructions as to the proper treatment of the information as confidential and/or

proprietary. Accordingly, it was not a trade secret under RSA 350-B:1, IV(b). *Mortgage Specialists, Inc. v. Davey*, 153 N.H. 764, 904 A.2d 652, 2006 N.H. LEXIS 106 (2006).

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, “An Overview of Intellectual Property Law for the General Practitioner,” see 36 N.H.B.J. 27 (March 1995).

350-B:2. Injunctive Relief.

I. Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

II. In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

III. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Source.
1989, 220:1, eff. Jan. 1, 1990.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, “An Overview of Intellectual Property Law for the General Practitioner,” see 36 N.H.B.J. 27 (March 1995).

350-B:3. Damages.

I. Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator’s unauthorized disclosure or use of a trade secret.

II. If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under paragraph I.

Source.
1989, 220:1, eff. Jan. 1, 1990.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, “An Overview of Intellectual Property Law for the General Practitioner,” see 36 N.H.B.J. 27 (March 1995).

350-B:4. Attorneys’ Fees.

The court may award reasonable attorneys’ fees to the prevailing party when:

- I. A claim of misappropriation is made in bad faith;
- II. A motion to terminate an injunction is made or resisted in bad faith; or
- III. Willful and malicious misappropriation exists.

Source.
1989, 220:1, eff. Jan. 1, 1990.

RESEARCH REFERENCES

New Hampshire Bar Journal.

For article, “An Overview of Intellectual Property Law for the General Practitioner,” see 36 N.H.B.J. 27 (March 1995).

350-B:5. Preservation of Secrecy.

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Source.
1989, 220:1, eff. Jan. 1, 1990.

350-B:6. Statute of Limitations.

An action for misappropriation shall be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

Source.
1989, 220:1, eff. Jan. 1, 1990.

350-B:7. Effect on Other Law.

I. Except as provided in paragraph II, this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

- II. This chapter shall not affect:
- (a) Contractual remedies, whether or not based upon misappropriation of a trade secret;
 - (b) Other civil remedies that are not based upon misappropriation of a trade secret; or
 - (c) Criminal remedies, whether or not based upon misappropriation of a trade secret.

Source.
1989, 220:1, eff. Jan. 1, 1990.

NOTES TO DECISIONS

Preemption

RSA 350-B:7 did not preempt the employer's claims of tortious interference with advantageous relations and violation of the New Hampshire Consumer Protection Act, RSA ch. 358-A, because the claims were supported by more than the mere misuse of the employer's customer information. However, the employer's claims for conversion and breach of fiduciary duty were preempted because they involved only the misappropriation of customer information. *Mortgage Specialists, Inc. v. Davey*, 153 N.H. 764, 904 A.2d 652, 2006 N.H. LEXIS 106 (2006).

350-B:8. Uniformity of Application and Construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Source.
1989, 220:1, eff. Jan. 1, 1990.

350-B:9. Short Title.

This chapter may be cited as the Uniform Trade Secrets Act.

Source.
1989, 220:1, eff. Jan. 1, 1990.

CHAPTER 356

COMBINATIONS AND MONOPOLIES

Section	
356:1.	Definitions.
356:2.	Restraints Prohibited.
356:3.	Monopolies Prohibited.
356:4.	Penalties.
356:4-a.	Civil Remedies and Enforcement.
356:4-a.	Civil Remedies and Enforcement.
356:4-b.	State Remedies.
356:4-b.	State Remedies.
356:4-c.	Actual Damages.
356:4-c.	Actual Damages.
356:4-d.	Election of Remedies.
356:4-e.	Prima Facie Evidence.
356:5.	Procedure.
356:6.	Testimonial Privilege.
356:7.	Exemption of Labor Organizations, etc.
356:8.	Exemption of Agricultural Producers.
356:8-a.	Exemption for Authorized Activity.
356:9.	Enforcement.
356:10.	Official Investigation.
356:11.	Private Enforcement.
356:12.	Limitation of Actions.
356:13.	Definition.
356:14.	Interpretation of Statute.

Cross References.
Exemption of municipal solid waste disposal cooperatives or districts from liability under antitrust laws, see RSA 149-M:21.
Regulation of business practices between motor vehicle manufacturers, distributors and dealers, see RSA 357-C.
Regulation of business practices for consumer protection generally, see RSA 358-A.
Regulation of gasoline franchises, see RSA 339-C.

RESEARCH REFERENCES

ALR.
Application of state antitrust laws to athletic leagues or associations. 85 A.L.R.3d 970.
Enforceability, insofar as restrictions would be reasonable, of contract containing unreasonable restrictions on competition. 61 A.L.R.3d 397.
Provisions of insurance company's contract with independent insurance agent restricting competitive placements by agent as illegal restraint of trade under state law. 42 A.L.R.4th 1072.
Right of corporation to indemnity for civil or criminal liability incurred by employee's violation of antitrust laws. 37 A.L.R.3d 1355.
Validity and construction of restrictive covenant not to compete ancillary to franchise agreement. 50 A.L.R.3d 746.
Validity and construction of state statutes forbidding area price discrimination. 67 A.L.R.3d 26.

356:1. Definitions.

As used in this chapter the following terms shall have the following meaning:
I. "Commodity" shall include tangible or intangible property, real, personal, or mixed.
II. "Government entity" shall include the state of New Hampshire and its political subdivisions.
III. "Person" shall include, where applicable, natural persons, trusts, government entities, corporations, partnerships, limited partnerships, proprietorships, incorporated or unincorporated associations, and any other legal entity.
IV. "Service" shall include any activity which is performed in whole or in part for financial gain.
V. "Trade or commerce" shall include any economic activity involving or relating to any commodity or service, and any other business activity.

Source.
1917, 177:2. 1919, Ex., 2:1. PL 168:1. RL 202:1. RSA 356:1. 1979, 385:1, eff. Aug. 22, 1979.

Amendments
—1979. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.
Meaning of "person", see RSA 356:13.

NOTES TO DECISIONS

Cited:
Cited in *State v. New Hampshire Retail Grocers Ass'n*, 115 N.H. 623, 348 A.2d 360, 1975 N.H. LEXIS 380 (1975).

356:2. Restraints Prohibited.

I. Every contract, combination, or conspiracy in restraint of trade is unlawful.
II. Every contract, combination, or conspiracy is unlawful which has the purpose or the effect of:
(a) Fixing, controlling or maintaining prices, rates, quotations or fees in any part of trade or commerce; or
(b) Fixing, controlling, maintaining, limiting or discontinuing the production, manufac-

ture, mining, sale or distribution of any commodity or service; or

(c) Allocating or dividing customers or markets in any part of trade or commerce; or

(d) Refusing to deal, or coercing, persuading or inducing any person to refuse to deal, with another person; or

(e) Fixing or controlling the price quotation of any bid for a public or private contract, submitting sham or complementary bids, or controlling the submission of bids including refusals to bid.

Source.
1917, 177:2. 1919, Ex., 2:1. PL 168:2. RL 202:2. RSA 356:2. 1979, 385:3, eff. Aug. 22, 1979.

Amendments
—1979. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.
Exemptions, see RSA 356:7–8a.

NOTES TO DECISIONS

- 1. Construction
- 2. Pleadings
- 3. Standing
- 4. “Filed rate” doctrine

1. Construction
Two corporations wholly owned by a common owner cannot combine or conspire in violation of a statute like this section. *Kenneth E. Curran, Inc. v. Auclair Transportation, Inc.*, 128 N.H. 743, 519 A.2d 280, 1986 N.H. LEXIS 363 (1986).
Summary judgment for defendants in an anti-trust claim was warranted where the two defendants were wholly owned by a common owner since the unity of their purposes barred any finding of an illegal combination or conspiracy. *Kenneth E. Curran, Inc. v. Auclair Transportation, Inc.*, 128 N.H. 743, 519 A.2d 280, 1986 N.H. LEXIS 363 (1986).

2. Pleadings
In order to assert a cause of action under this section, a party must plead the existence of a combination. *Mountain Springs Water Co. v. Mountain Lakes Village District*, 126 N.H. 199, 489 A.2d 647, 1985 N.H. LEXIS 246 (1985).

The existence of a newsletter which was allegedly written and printed as a joint effort by the defendants for the purpose of inducing a utility’s customers to refuse to deal with the utility provided a sufficient factual basis to allege a combination by the defendants in a cause of action under paragraph II(d) of this section. *Mountain Springs Water Co. v. Mountain Lakes Village District*, 126 N.H. 199, 489 A.2d 647, 1985 N.H. LEXIS 246 (1985).

3. Standing
Court would apply federal antitrust standing requirements as that would promote uniform construction of antitrust laws as contemplated by RSA 356:14, and thus court granted defendant’s motion for summary judgment with respect to state antitrust claim for the same reasons it granted motion with respect to federal antitrust claim. *Donovan v. Digital Equip. Corp.*, 883 F. Supp. 775, 1994 U.S. Dist. LEXIS 18424 (D.N.H. 1994).

4. “Filed rate” doctrine
Filed rate doctrine applied to preclude claims by family and friends of prison inmates that rates charged for collect calls by inmates violated anti-monopoly statutes, RSA 356:2, :3 (1995), as well as the New Hampshire Consumer Protection Act, RSA 358-A:2 (1998). When filed rate doctrine applies, state law claims are preempted. *Guglielmo v. WorldCom, Inc.*, 148 N.H. 309, 808 A.2d 65, 2002 N.H. LEXIS 125 (2002).

Cited:
Cited in *Kenneth E. Curran, Inc. v. Auclair Transportation, Inc.*, 121 N.H. 451, 431 A.2d 124, 1981 N.H. LEXIS 339 (1981); *ELCA of New Hampshire, Inc. v. McIntyre*, 129 N.H. 114, 523 A.2d 90, 1987 N.H. LEXIS 163 (1987); *Jay Edwards, Inc. v. Baker*, 130 N.H. 41, 534 A.2d 706, 1987 N.H. LEXIS 274 (1987).

356:3. Monopolies Prohibited.

The establishment, maintenance or use of monopoly power, or any attempt to establish, maintain or use monopoly power over trade or commerce for the purpose of affecting competition or controlling, fixing or maintaining prices is unlawful.

Source.
1917, 177:3. PL 168:3. RL 202:3. RSA 356:3. 1979, 385:3, eff. Aug. 22, 1979.

Amendments
—1979. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.
Exemptions, see RSA 356:7–8-a.

NOTES TO DECISIONS

Cited:
Cited in *Kenneth E. Curran, Inc. v. Auclair Transportation, Inc.*, 128 N.H. 743, 519 A.2d 280, 1986 N.H. LEXIS 363 (1986); *Guglielmo v. WorldCom, Inc.*, 148 N.H. 309, 808 A.2d 65, 2002 N.H. LEXIS 125 (2002).

356:4. Penalties.

A person who knowingly and willfully engages in conduct prohibited by this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. When the offense consists of a combination to control the price or supply, or to prevent competition in the sale, of foodstuffs or fuel, the person thus engaged shall be guilty of a class B felony if a natural person, or guilty of a felony if any other person. Each day’s violation of any provision of RSA 356 shall constitute a separate offense.

Source.
1917, 177:4. PL 168:4. RL 202:4. RSA 356:4. 1973, 528:248. 1979, 385:4, eff. Aug. 22, 1979.

Amendments
—1979. Rewritten to the extent that a detailed comparison would be impracticable.

—1973. Rewritten to the extent that a detailed comparison would be impracticable.

Cross References.
Civil actions for enforcement by attorney general, see RSA 356:4-a–4-d.
Civil actions for enforcement by private persons, see RSA 356:11.
Classification of crimes, see RSA 625:9.
Election of remedies, see RSA 356:4-d.
Sentences, see RSA 651.

[RSA 356:4-a effective until January 1, 2008; see also RSA 356:4-a set out below.]

356:4-a. Civil Remedies and Enforcement.

Notwithstanding the provisions of RSA 356:4,

the attorney general may bring an action in the name of the state for injunctive relief and civil penalties for violations of any provision of this chapter. The action may be brought in the superior court of the county in which the defendant resides or has his principal place of business, or, with the consent of the parties or if the defendant is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

Source.

1973, 434:1, eff. Aug. 29, 1973.

Cross References.

Civil penalties, see RSA 356:4-b.

Election of remedies, see RSA 356:4-d.

Limitation period, see RSA 356:12.

Recovery of actual damages by state, etc., see RSA 356:4-c.

NOTES TO DECISIONS

Cited:

Cited in *State v. New Hampshire Retail Grocers Ass'n*, 115 N.H. 623, 348 A.2d 360, 1975 N.H. LEXIS 380 (1975).

RESEARCH REFERENCES

New Hampshire Court Rules Annotated.

Injunctions generally, see Rules 161-163, Rules of the Superior Court, New Hampshire Court Rules Annotated.

[RSA 356:4-a effective January 1, 2008; see RSA 356:4-a as effective until January 1, 2008 set out above.]

356:4-a. Civil Remedies and Enforcement.

Notwithstanding the provisions of RSA 356:4:

I. The attorney general may bring an action in the name of the state for injunctive relief and civil penalties for violations of any provision of this chapter. The action may be brought in the superior court of the county in which the defendant resides or has his principal place of business, or, with the consent of the parties or if the defendant is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

II. The attorney general is authorized to bring an action for violations of this chapter as *parens patriae* on behalf of natural persons residing in the state. Whether the injured persons dealt directly or indirectly with the defendant shall not bar this action or otherwise limit recovery.

Source.

1973, 434:1, eff. Aug. 29, 1973. 2007, 336:1, eff. January 1, 2008.

Amendments

—2007. Designated the existing provisions of the section as par. I and added par. II.

Cross References.

Civil penalties, see RSA 356:4-b.

Election of remedies, see RSA 356:4-d.

Limitation period, see RSA 356:12.

Recovery of actual damages by state, etc., see RSA 356:4-c.

NOTES TO DECISIONS

Cited:

Cited in *State v. New Hampshire Retail Grocers Ass'n*, 115 N.H. 623, 348 A.2d 360, 1975 N.H. LEXIS 380 (1975).

RESEARCH REFERENCES

New Hampshire Court Rules Annotated.

Injunctions generally, see Rules 161-163, Rules of the Superior Court, New Hampshire Court Rules Annotated.

[RSA 356:4-b effective until January 1, 2008; see also RSA 356:4-b set out below.]

356:4-b. State Remedies.

In any action brought pursuant to RSA 356:4-a the superior court may assess, for the benefit of the state, a civil penalty of not more than \$25,000 for each violation of any provision of this chapter. The superior court may also grant mandatory injunctions reasonably necessary to eliminate restrictions in trade or commerce declared unlawful by this chapter. In any such action, the state shall be entitled to recover the costs of the action.

Source.

1973, 434:1. 1979, 385:5, eff. Aug. 22, 1979.

Amendments

—1979. Substituted "\$25,000" for "five thousand dollars" in the first sentence and deleted "trusts and" preceding "restrictions" in the second sentence.

Cross References.

Recovery of actual damages, see RSA 356:4-c.

NOTES TO DECISIONS

Cited:

Cited in *State v. New Hampshire Retail Grocers Ass'n*, 115 N.H. 623, 348 A.2d 360, 1975 N.H. LEXIS 380 (1975).

RESEARCH REFERENCES

New Hampshire Court Rules Annotated.

Injunctions generally, see Rules 161-163, Rules of the Superior Court, New Hampshire Court Rules Annotated.

[RSA 356:4-b effective January 1, 2008; see RSA 356:4-b as effective until January 1, 2008 set out above.]

356:4-b. State Remedies.

In any action brought pursuant to RSA 356:4-a the superior court may assess, for the benefit of the state, a civil penalty of not more than \$25,000 for each violation of any provision of this chapter. The superior court may also grant mandatory injunctions reasonably necessary to eliminate restrictions in trade or commerce declared unlawful by this chapter. In any such action, the state shall be entitled to recover

the costs of the action. In any action brought pursuant to RSA 356:4-a, II, the state shall recover actual damages sustained, and as determined by the court, the costs of the suit and reasonable attorney's fees. If the trier of facts finds that the violation is willful or flagrant, the court shall award as much as 3 times, but not less than 2 times the actual damages.

Source.
1973, 434:1. 1979, 385:5, eff. Aug. 22, 1979. 2007, 336:2, eff. January 1, 2008.

Amendments
—2007. Added the third and fourth sentences.
—1979. Substituted "\$25,000" for "five thousand dollars" in the first sentence and deleted "trusts and" preceding "restrictions" in the second sentence.

Cross References.
Recovery of actual damages, see RSA 356:4-c.

NOTES TO DECISIONS

Cited:
Cited in *State v. New Hampshire Retail Grocers Ass'n*, 115 N.H. 623, 348 A.2d 360, 1975 N.H. LEXIS 380 (1975).

RESEARCH REFERENCES

New Hampshire Court Rules Annotated.
Injunctions generally, see Rules 161-163, Rules of the Superior Court, New Hampshire Court Rules Annotated.

[RSA 356:4-c effective until January 1, 2008; see also RSA 356:4-c set out below.]

356:4-c. Actual Damages.

The state, a political subdivision thereof, or any public agency injured in its business or property by reason of a violation of this chapter may recover the actual damages sustained and the costs of the suit including reasonable attorneys fees.

Source.
1973, 434:1, eff. Aug. 29, 1973.

Cross References.
Civil enforcement proceedings generally, see RSA 356:4-a.
Limitation period, see RSA 356:12.
Recovery of actual and punitive damages by private persons, see RSA 356:11.

[RSA 356:4-c effective January 1, 2008; see RSA 356:4-c as effective until January 1, 2008 set out above.]

356:4-c. Actual Damages.

The state, a political subdivision thereof, or any public agency injured in its business or property by reason of a violation of this chapter may recover the actual damages sustained and the costs of the suit including reasonable attorney's fees. The state, political subdivision, or public agency shall recover regardless of

whether it dealt directly or indirectly with the defendant.

Source.
1973, 434:1, eff. Aug. 29, 1973. 2007, 336:3, eff. January 1, 2008.

Amendments
—2007. Added the second sentence.

Cross References.
Civil enforcement proceedings generally, see RSA 356:4-a.
Limitation period, see RSA 356:12.
Recovery of actual and punitive damages by private persons, see RSA 356:11.

356:4-d. Election of Remedies.

- I. Institution of an action under RSA 356:4-a to assess a civil penalty against a person shall preclude the institution of criminal proceedings under RSA 356:4 against that person for the conduct alleged in the civil action.
- II. Institution of criminal prosecution against a person under RSA 356:4 shall preclude the institution of civil proceedings under RSA 356:4-a against that person for the conduct specified in the information or indictment.

Source.
1979, 385:6, eff. Aug. 22, 1979.

356:4-e. Prima Facie Evidence.

- I. A final judgment or decree rendered in any civil or criminal proceeding under this chapter brought by the state, to the effect that a defendant has violated RSA 356:2 or 3 shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under RSA 356:11 as to all matters respecting which the judgment obtained by the state would be an estoppel as between the parties thereto.
- II. This section does not apply to consent judgments or decrees entered before any testimony has been given in a hearing on the merits.

Source.
1979, 385:6, eff. Aug. 22, 1979.

356:5. Procedure.

A complaint or indictment under this chapter shall proceed to judgment according to the regular course of criminal proceedings. It shall be otherwise disposed of only upon motion in writing stating specifically the reasons therefor and verified by affidavit if facts are relied on. If the court or magistrate certifies in writing that he is satisfied that the cause relied on exists, and that the interests of public justice require the allowance thereof, such motion shall be allowed and said certificate filed in the case.

Source.
1917, 177:5. PL 168:5. RL 202:5.

Cross References.
Election of remedies, see RSA 356:4-d.

356:6. Testimonial Privilege.

No person called as a witness to testify at any proceedings under this chapter shall be excused from testifying, or from producing any books, papers or documents which are material, on the ground that his testimony will tend to incriminate him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any such proceeding.

Source.

1917, 177:6. PL 168:6. RL 202:6.

Cross References.

Privilege against self-incrimination generally, see New Hampshire Constitution, Part 1, Article 15.

NOTES TO DECISIONS

Cited:

Cited in *Wyman v. De Gregory*, 101 N.H. 171, 137 A.2d 512, 1957 N.H. LEXIS 47 (1957); *State v. New Hampshire Retail Grocers Ass'n*, 115 N.H. 623, 348 A.2d 360, 1975 N.H. LEXIS 380 (1975).

356:7. Exemption of Labor Organizations, etc.

Nothing contained in this chapter shall forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof.

Source.

1917, 177:7. PL 168:7. RL 202:7. RSA 356:7. 1979, 385:7, eff. Aug. 22, 1979.

Amendments

—1979. Deleted “nor shall such organizations be illegal trusts or conspiracies against trade, under this chapter” following “legitimate objects thereof”.

Cross References.

Establishment, use, etc., of monopoly power generally, see RSA 356:3.

Illegal restraints of trade generally, see RSA 356:2.

NOTES TO DECISIONS

Cited:

Cited in *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 42 S. Ct. 570, 66 L. Ed. 975, 1922 U.S. LEXIS 2490, 27 A.L.R. 762 (1922).

356:8. Exemption of Agricultural Producers.

An organization enumerated in RSA 356:7, or the members thereof, if they have a capital stock, shall be exempt from this chapter, if they are operating in conformity with chapter 57 of the Laws of the Second Session of the Sixty-seventh Congress, entitled, “An Act to authorize

association of producers of agricultural products”.

Source.

1917, 177:8. 1923, 120:1. PL 168:8. RL 202:8. RSA 356:8. 1979, 385:8, eff. Aug. 22, 1979.

References in text.

Chapter 57 of the Laws of the Second Session of the Sixty-seventh Congress, referred to in this section, is classified to 7 U.S.C.S. §§ 291, 292.

Amendments

—1979. Substituted the words “An organization enumerated in RSA 356:7, or the members thereof, if they have a capital stock, shall be exempt from this chapter” for “No organization enumerated in section 7, or the members thereof, if they have a capital stock, shall be held or considered to be an illegal trust or conspiracy against trade, under this chapter”.

Cross References.

Establishment, use, etc., of monopoly power, generally, see RSA 356:3.

Illegal restraints of trade generally, see RSA 356:2.

356:8-a. Exemption for Authorized Activity.

Activities of and arrangements between persons shall be exempt from this chapter if such are permitted, authorized, approved, required, or regulated by a regulatory body acting under a federal or state statutory scheme or otherwise actively supervised by a regulatory agency.

Source.

1979, 385:9, eff. Aug. 22, 1979. 1999, 289:10, eff. July 1, 1999.

Amendments

—1999. Substituted “actively supervised by” for “subject to the jurisdiction of” preceding “a regulatory”.

Applicability of 1999 amendment.

1999, 289:16, eff. July 1, 1999, provided that the amendment to this section, by section 10 of the act, shall not apply to any transaction entered into prior to July 1, 1999.

Cross References.

Establishment, use, etc., of monopoly power generally, see RSA 356:3.

Illegal restraints of trade generally, see RSA 356:2.

356:9. Enforcement.

This chapter shall be enforced by the department of justice.

Source.

1919, Sp., 2:2. PL 168:9. RL 202:9. RSA 356:9. 1979, 385:10. 1985, 300:7, I(a).

Amendments

—1985. Substituted “department of justice” for “attorney general’s office”.

—1979. Rewritten to the extent that a detailed comparison would be impracticable.

Effective date of amendments

—1985 amendment. 1985, 300:33, IV, provided that the provision of the act amending this section was to take effect on the date the department of justice established by the act becomes operational on the date set according to 1983, 372:5, II. 1983, 372:5, II, is set out as a note following the analysis for RSA 21-G. Pursuant to 1983, 372:5, II, the joint committee on implementation of reorganization and the governor deter-

mined the effective date upon which the department became fully operational to be Jan. 1, 1986.

Cross References.

- Civil remedies and enforcement proceedings generally, see RSA 356:4-a--4-c.
- Criminal penalties generally, see RSA 356:4.
- Election of remedies, see RSA 356:4-d.
- Private enforcement generally, see RSA 356:11.

356:10. Official Investigation.

I. The attorney general shall have the power to examine witnesses and documents for the purpose of enforcing the provisions of this chapter.

II. If the attorney general believes a person under investigation for violation of the provisions of this chapter may have information or be in possession, custody or control of any document or other tangible object relevant to the investigation, before the institution of any court proceedings, the attorney general may serve upon the person a written demand in the form of a subpoena or subpoena duces tecum to appear and be examined under oath and to produce the documents or objects for inspection and copying. A subpoena or subpoena duces tecum of the attorney general may be served by the person designated therein to serve it. The attorney general may administer an oath or affirmation to any person and conduct hearings in aid of any investigation under this chapter. Any testimony given by any person so sworn shall be subject to the pains and penalties of perjury.

III. Any subpoena issued pursuant to this chapter shall:

- (a) Describe the nature of the conduct constituting the violation under investigation;
- (b) Describe the documents or objects with sufficient definiteness to permit them to be fairly identified;
- (c) Prescribe a reasonable time at which the person shall appear to testify or within which the documents or objects shall be produced, and advise the person that objections to or reasons for not complying with the subpoena may be filed with the attorney general on or before that date;
- (d) Specify a place for the taking of testimony or for production and designate a person who shall be custodian of the documents or objects.

IV. If a person objects to or otherwise fails to comply with the subpoena or subpoena duces tecum served upon him under this chapter, the attorney general may file in the superior court of the county in which the person resides or maintains his principal place of business or if the person is a nonresident and has no principal place of business within this state, in Merrimack county superior court, a petition for an order of the court to enforce the subpoena. Notice of hearing and a copy of the petition shall be served upon the person, who may appear in opposition to the petition. If the court finds

reasonable cause to believe that there may have been a violation of any provision of this chapter and that the testimony, documents or objects subpoenaed are relevant to the investigation, it shall order the person to appear for testimony or to produce the document or object for inspection and copying as demanded, subject to any modification of the subpoena the court prescribes.

V. Any procedure, testimony taken or document or object produced under this chapter shall be kept confidential by the attorney general before the institution against the person of an action brought under this chapter for the violation under investigation unless confidentiality is waived by the person or disclosure is authorized by the superior court.

Source.

1973, 434:2, eff. Aug. 29, 1973.

Cross References.

Testimonial privileges generally, see RSA 356:6.

NOTES TO DECISIONS

Cited:

Cited in *State v. New Hampshire Retail Grocers Ass'n*, 115 N.H. 623, 348 A.2d 360, 1975 N.H. LEXIS 380 (1975).

356:11. Private Enforcement.

I. Any person threatened with injury or damage to his business or property by reason of a violation of this chapter may institute an action or proceeding for injunctive relief when and under the same conditions and principles as injunctive relief is granted in other cases.

[Paragraph II effective until January 1, 2008; see also Paragraph II set out below.]

II. Any person injured in his business or property by reason of a violation of this chapter may recover the actual damages sustained, and as determined by the court, the costs of the suit and reasonable attorney's fees. If the trier of facts finds that the violation is willful or flagrant, they may increase damages to an amount not in excess of 3 times the actual damages sustained.

[Paragraph II effective January 1, 2008; see also Paragraph II set out above.]

II. Any person injured in his business or property by reason of a violation of this chapter may recover the actual damages sustained, and as determined by the court, the costs of the suit and reasonable attorney's fees regardless of whether that person dealt directly or indirectly with the defendant. If the trier of facts finds that the violation is willful or flagrant, they may increase damages to an amount not in excess of 3 times the actual damages sustained.

Source.

1973, 434:2, eff. Aug. 29, 1973. 2007, 336:4, eff. January 1, 2008.

Amendments

—2007. Paragraph II: Added “regardless of whether that person dealt directly or indirectly with the defendant” at the end of the first sentence.

Cross References.

Limitation period, see RSA 356:12.
Prima facie evidence of violations of chapter, see RSA 356:4-e.
Recovery of actual damages by state, etc., see RSA 356:4-c.

NOTES TO DECISIONS

Cited:

Cited in *Kenneth E. Curran, Inc. v. Auclair Transportation, Inc.*, 121 N.H. 451, 431 A.2d 124, 1981 N.H. LEXIS 339 (1981); *Allgeyer v. Lincoln*, 125 N.H. 503, 484 A.2d 1079, 1984 N.H. LEXIS 406 (1984); *Minuteman, LLC v. Microsoft Corp.*, 147 N.H. 634, 795 A.2d 833, 2002 N.H. LEXIS 50 (2002).

RESEARCH REFERENCES

New Hampshire Court Rules Annotated.

Injunctions generally, see Rules 161-163, Rules of the Superior Court, New Hampshire Court Rules Annotated.

New Hampshire Bar Journal.

For article, “Lex Loci: A Survey of New Hampshire Supreme Court Decisions,” see 43 N.H.B.J. 50 (Sept. 2002).

356:12. Limitation of Actions.

I. A civil action commenced pursuant to RSA 356:4-a to recover a civil penalty is barred if not commenced within 4 years after the cause of action accrues.

II. An action commenced pursuant to RSA 356:4-c and RSA 356:11 to recover damages is barred if it is not commenced within 4 years after the cause of action accrues, or within one year after the conclusion of any action or proceeding commenced pursuant to RSA 356:4-a.

Source.

1973, 434:2, eff. Aug. 29, 1973.

NOTES TO DECISIONS

Cited:

Cited in *Kenneth E. Curran, Inc. v. Auclair Transportation,*

Inc., 128 N.H. 743, 519 A.2d 280, 1986 N.H. LEXIS 363 (1986).

RESEARCH REFERENCES

ALR.

Time of accrual of action under state antitrust statutes. 90 A.L.R.4th 1102.

356:13. Definition.

For the purposes of this chapter, “person” shall mean an individual, corporation, trust, estate, partnership, association, or any other legal entity.

Source.

1973, 434:2, eff. Aug. 29, 1973.

Cross References.

Definitions generally, see RSA 356:1.

356:14. Interpretation of Statute.

In any action or prosecution under this chapter, the courts may be guided by interpretations of the United States’ antitrust laws.

Source.

1973, 434:2, eff. Aug. 29, 1973.

NOTES TO DECISIONS

Standing

Court would apply federal antitrust standing requirements as that would promote uniform construction of antitrust laws as contemplated by RSA 356:14, and thus court granted defendant’s motion for summary judgment with respect to state antitrust claim for the same reasons it granted motion with respect to federal antitrust claim. *Donovan v. Digital Equip. Corp.*, 883 F. Supp. 775, 1994 U.S. Dist. LEXIS 18424 (D.N.H. 1994).

Cited:

Cited in *Kenneth E. Curran, Inc. v. Auclair Transportation, Inc.*, 128 N.H. 743, 519 A.2d 280, 1986 N.H. LEXIS 363 (1986); *U.S. Healthcare, Inc. v. Healthsource, Inc.*, 986 F.2d 589, 1993 U.S. App. LEXIS 3415 (1st Cir. 1993); *Curtis Mfg. Co. v. Plasti-Clip Corp.*, 888 F. Supp. 1212 (D.N.H. 1994), rev’d without opinion, 135 F.3d 778 (Fed. Cir. 1998).

TITLE XXXVII

INSURANCE

CHAPTER 420-A

HEALTH SERVICE CORPORATIONS

Section	
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420-A:17-a.	Coverage for Diabetes Services and Supplies.
420-A:17-b.	Health Service Corporations; Coverage for Dental Procedures; Age for Covered Service Increased.
420-A:17-c.	Coverage for Prescription Contraceptive Drugs and Prescription Contraceptive Devices and for Contraceptive Services.
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420-A:20.	Reports and Examinations.
420-A:21.	Reserves.
420-A:22.	Annual Review.
420-A:23.	Appeals.
420-A:24.	Agreements with Providers.
420-A:25.	Administrative Services.
420-A:26.	Nonliability of Corporation.
420-A:27.	Taxation.
420-A:28.	Relationship of Provider and Patient.
420-A:29.	Foreign Corporations; Reciprocity.
420-A:30.	Exceptions.
420-A:31.	Rules.
420-A:32.	Workers' Compensation Law Not Affected.

Repeal and reenactment of chapter.

1997, 290:1, eff. Jan. 1, 1998, provided for the repeal and reenactment of RSA 420-A. Original RSA 420-A, consisting of 420-A:1–420-A:32, was derived from 1975, 365:1; 1977, 232:8; 1978, 11:6; 1985, 239:5, 316:4, 5; 1986, 114:3, 163:3; 1987, 156:1; 1990, 194:3; 1991, 120:1; 1991, 23:2, 3; 1992, 211:4, 222:2, 8, 246:4, 255:14; 1993, 102:5, 162:4, 196:5; 1994, 214:9;

1995, 112:15, 16, 126:3, 235:4, 256:2; and 1996, 131:5; 149:3, 188:7.

Prior to recodification of RSA 420-A by 1997, 190:1, RSA 420-A:7-b had been repealed by 1996, 188:14, III.

RESEARCH REFERENCES

ALR.

Priority and apportionment of liability between medical and hospital expense insurers. 25 A.L.R.4th 1022.

Right of insurer under health or hospitalization policy to restitution of payments made under mistake. 79 A.L.R.3d 1113.

What constitutes a "hospital" within coverage or exclusionary clauses of hospitalization policy. 46 A.L.R.3d 1244.

420-A:1. Definitions.

In this chapter:

I. "Commissioner" means the insurance commissioner.

II. "Covered dependent" means the spouse, an adult dependent, or a child or an adopted child of the subscriber who is named in the subscription certificate issued to the subscriber and with respect to whom appropriate premium is specified in the certificate.

[Paragraph II-a effective January 1, 2008.]

II-a. "Date of enrollment" means the first day of coverage under the plan, or, if there is a waiting period, the first day of the waiting period, which is typically the first day of work.

III. "Health service corporation" means a nonprofit sharing corporation without capital stock organized under the laws of the state for the purpose of establishing, maintaining, and operating a health service plan or plans whereby the expense of health-related care may be partially or wholly provided to its subscribers by the payment of benefits for facilities, professional services, appliances, medicines, or supplies furnished directly or indirectly by the health service corporation to its subscribers.

IV. "Provider" means any physician, hospital, or other institution, organization, or other person who furnishes health care services.

V. "Subscriber" means a person to whom a subscription certificate is issued by the health service corporation and which sets forth the kinds and extent of health services for which the health service corporation is liable to make payment and which constitutes the contract between the subscriber and the health service corporation.

Source.

1997, 190:1, eff. Jan. 1, 1998. 2007, 289:12, eff. January 1, 2008.

Amendments

—2007. Paragraph II-a: Added.

Contingent 1997, 345 amendment

1997, 345:5 provided for the amendment of this section. However, under the terms of 1997, 345:11, eff. January 1, 1998, the amendments did not become effective.

[RSA 420-A:2 effective until January 1, 2008; see also RSA 420-A:2 set out below.]

420-A:2. Applicable Statutes.

Every health service corporation shall be governed by this chapter and the relevant provisions of RSA 161-H, and shall be exempt from this title except for the provisions of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415-A, RSA 415-F, RSA 415:6, II(4), RSA 415:6-g, RSA 415:6-k, RSA 415:6-m, RSA 415:18, V, RSA 415:18, VII(g), RSA 415:18, VII-a, RSA 415:18-a, RSA 415:18-j, RSA 415:18-o, RSA 415:18-r, RSA 415:22, RSA 417, RSA 417-E, RSA 420-J, and all applicable provisions of title XXXVII wherein such corporations are specifically included. Every health service corporation and its agents shall be subject to the fees prescribed for health service corporations under RSA 400-A:29, VII.

Source.

1997, 190:1, eff. Jan. 1, 1998; 345:9, eff. at 12:01 a.m., Jan. 1, 1998. 1999, 323:7, eff. Sept. 14, 1999. 2000, 207:6, eff. July 29, 2000. 2003, 286:4, eff. Sept. 16, 2003. 2006, 187:3, eff. July 25, 2006.

Amendments

—2006. Inserted “RSA 415:6-m” following “RSA 415:6-k” and inserted “RSA 415:18-r” following “RSA 415:18-o”.

—2003. Inserted “RSA 415:6-k” following “RSA 415:6-g” and “RSA 415:18-o” following “RSA 415:18-j” in the first sentence.

—2000. Inserted “RSA 404-F” following “RSA 402-C” in the first sentence.

—1999. Inserted “RSA 415:6-g” following “RSA 415:6, II(4)” and “RSA 415:18-j” following “RSA 415:18-a”.

—1997. Inserted “420-J” following “RSA 417-E” in the first sentence.

Contingent 1999 amendment.

1999, 323:4 provided for the amendment of this section. However, under the terms of 1999, 323:9, eff. September 14, 1999, the amendment did not become effective.

[RSA 420-A:2 effective January 1, 2008; see also RSA 420-A:2 set out above.]

420-A:2. Applicable Statutes.

Every health service corporation shall be governed by this chapter and the relevant provisions of RSA 161-H, and shall be exempt from this title except for the provisions of RSA 400-A:39, RSA 401-B, RSA 402-C, RSA 404-F, RSA 415-A, RSA 415-F, RSA 415:6, II(4), RSA 415:6-g, RSA 415:6-k, RSA 415:6-m, RSA 415:18, V, RSA 415:18, VII-a, RSA 415:18, XVI and XVII, RSA 415:18-a, RSA 415:18-j, RSA 415:18-o, RSA 415:18-r, RSA 415:22, RSA 417, RSA 417-E, RSA 420-J, and all applicable provisions of title XXXVII wherein such corporations are specifically included. Every health service corporation and its agents shall be sub-

ject to the fees prescribed for health service corporations under RSA 400-A:29, VII.

Source.

1997, 190:1, eff. Jan. 1, 1998; 345:9, eff. at 12:01 a.m., Jan. 1, 1998. 1999, 323:7, eff. Sept. 14, 1999. 2000, 207:6, eff. July 29, 2000. 2003, 286:4, eff. Sept. 16, 2003. 2006, 187:3, eff. July 25, 2006. 2007, 289:35, eff. January 1, 2008.

Amendments

—2007. Deleted “RSA 415:18, VII(g)” preceding “RSA 415:18, VII-a” and inserted “RSA 415:18, XVI and XVII” thereafter in the first sentence.

—2006. Inserted “RSA 415:6-m” following “RSA 415:6-k” and inserted “RSA 415:18-r” following “RSA 415:18-o”.

—2003. Inserted “RSA 415:6-k” following “RSA 415:6-g” and “RSA 415:18-o” following “RSA 415:18-j” in the first sentence.

—2000. Inserted “RSA 404-F” following “RSA 402-C” in the first sentence.

—1999. Inserted “RSA 415:6-g” following “RSA 415:6, II(4)” and “RSA 415:18-j” following “RSA 415:18-a”.

—1997. Inserted “420-J” following “RSA 417-E” in the first sentence.

Contingent 1999 amendment.

1999, 323:4 provided for the amendment of this section. However, under the terms of 1999, 323:9, eff. September 14, 1999, the amendment did not become effective.

420-A:3. Incorporation.

Persons desiring to form a health service corporation may incorporate under RSA 292, but subject to the following provisions:

I. The certificate of incorporation of each health service corporation shall have endorsed upon it or attached to it the approval of the commissioner, if the commissioner finds the same to be in accordance with this chapter.

II. The certificate shall include a statement of the territory in which the health service corporation will operate and a statement of the purposes of such corporation.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:4. License to Health Service Corporation.

I. No health service corporation organized under the laws of this state shall do business unless it has obtained a license from the commissioner.

II. No health service corporation organized under the laws of any other state or country shall be licensed to do business in this state except as provided in RSA 420-A:29.

III. Application for such license shall be made in the form required by the commissioner and shall contain the information the commissioner deems necessary. The application shall be accompanied by a copy of each of the following documents:

- (a) Articles of incorporation.
- (b) Bylaws.

(c) Proposed contracts to be issued to subscribers showing a table of rates to be charged and the benefits to which they will be entitled.

(d) Proposed contracts, if any, between the health service corporation and providers.

(e) Financial statements.

IV. The commissioner shall issue a license when the commissioner finds:

(a) The applicant is established as a bona fide nonprofit health service corporation;

(b) The applicant has paid an annual license fee in accordance with RSA 400-A:29;

(c) The contracts between the applicant and providers, if any, obligate the respective providers to provide the service or thing to which the subscriber may be entitled under the terms of the contract to be issued to subscribers;

(d) The rates to be charged and the benefits to be provided are reasonable and nondiscriminatory;

(e) The financial condition of the applicant is sound and provides assurance of its ability to meet its obligations; and

(f) The applicant is reliable, entitled to public confidence and has complied with the laws of the state applicable to it.

V. Any such license may be revoked for cause shown and after notice and hearing upon failure to maintain the requirements of this chapter.

VI. All such licenses shall expire on June 14, but may be renewed upon payment of the annual license fee.

Source.

1997, 190:1, eff. Jan. 1, 1998. 2000, 162:4, eff. July 22, 2000.

Amendments

—2000. Paragraph VI: Substituted “June 14” for “April 1”.

420-A:5. Directors.

The directors of a health service corporation:

I. Shall at all times include representation from the following groups:

(a) The general public exclusive of those falling within subparagraphs (b) and (c) and paragraph II.

(b) Physicians actively engaged in practice.

(c) Administrators or trustees of hospitals, if any, which have contracted with the health service corporation to render nonprofit hospital service or indemnity to subscribers.

II. May include representatives of other health care providers. The number of directors described in subparagraph I(a) shall exceed the combined total of the number of directors described in subparagraphs I(b) and (c) and this paragraph.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:6. Liability of Directors, Officers, and Trustees.

I. A health service corporation may indemnify any person who serves as director, officer, or

trustee of such corporation by contract or by including an indemnity provision in its articles of agreement or bylaws substantially in accordance with RSA 293-A:8.50 through RSA 293-A:8.58. Indemnity may be offered for any and all damages occurring on or after January 1, 1991.

II. A health service corporation may amend its articles of agreement to contain a provision eliminating or limiting the personal liability of a director, officer, or trustee to such corporation and its members and subscribers for monetary damages for breach of fiduciary duty as a director, an officer, or both, except with respect to:

(a) Any breach of the director's, officer's or trustee's duty of loyalty to the corporation and its members and subscribers.

(b) Acts or omissions which are not in good faith or which involve intentional misconduct or a knowing violation of law.

(c) Actions for which a director, officer, or trustee derived an improper personal benefit.

III. Paragraph II shall not be construed to eliminate or limit the liability of a director, an officer, a trustee or any combination thereof, for any act or omission occurring prior to July 13, 1991.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:7. License to Agents.

I. No person, for himself or in behalf of any person, shall sell or offer to sell any such health service as is provided for in this chapter without being licensed therefor by the commissioner pursuant to RSA 402-J.

II. Upon written notice by a health service corporation licensed to do business in this state of its appointment of a person to act as its agent under this chapter, the commissioner shall, if the commissioner is first satisfied that the appointee is a suitable person and intends to hold himself out in good faith as an agent, upon payment of the proper fee by the applicant, issue to the appointee a license to act as such agent.

III. A license previously issued may be renewed upon the application of the health service corporation upon payment of the proper fee.

IV. The commissioner may at any time after granting such license, for cause shown and after notice and hearing, determine such licensee to be unsuitable to act as such agent, and shall thereupon revoke such license and notify both the health service corporation and the agent of such revocation.

V. Unless revoked by the commissioner, or unless the health service corporation by written notice to the commissioner cancels the agent's authority to act for it, such license issued to an agent, or any renewal of such license, shall expire on June 14 of the second year after its issue.

VI. If a person acts or aids in any manner in the negotiation of health insurance contracts, or solicits or receives any risk or application for such service, without a license from the insurance commissioner, or if the license granted to such person or to the health service corporation for which the person acts as agent has been revoked, such person shall be guilty of a class A misdemeanor if a natural person, or guilty of a felony if any other person; but any contract issued on an application thus procured shall bind the health service corporation if otherwise valid. This paragraph shall not apply to any office employee of the health service corporation, or to any persons rendering their services without compensation.

Source.

1997, 190:1, eff. Jan. 1, 1998. 2000, 315:22, eff. Jan. 1, 2001. 2005, 206:8, eff. Jan. 1, 2006.

Amendments

—2005. Paragraph VI: Substituted “class A misdemeanor if a natural person, or guilty of a felony if any other person” for “violation” in the first sentence.

—2000. Paragraph I: Added “pursuant to RSA 402-J” following “commissioner” at the end of the paragraph.

Cross References.

Classification of crimes, RSA 625:9.

Licensing of agents of foreign insurers generally, see RSA 405:15 et seq.

Licensing of agents of insurance companies generally, see RSA 402:15 et seq.

Sentences, see RSA 651.

420-A:8. Filing and Approval of Contracts and Rates.

I. No health service corporation shall enter into any contract with subscribers until it shall have filed with the commissioner a copy of the form of such contract, including all riders and endorsements to the contract and until the commissioner's approval thereof shall have been obtained. Any form of contract not disapproved by the commissioner within 90 days after the filing shall be deemed to have been approved as filed.

II. No health service corporation shall enter into any contract with subscribers until it shall have filed with the commissioner a full schedule of rates to be paid by the subscribers and shall have obtained the said commissioner's approval. The commissioner may refuse such approval if the commissioner finds such rates are excessive, inadequate, or discriminatory. For the purpose of determining the proper rates to be charged for such services, the commissioner may employ a competent actuary who shall be paid by the health services corporation for which the services are rendered.

Source.

1997, 190:1, eff. Jan. 1, 1998.

NOTES TO DECISIONS

ANNOTATIONS DECIDED UNDER PRIOR LAW

1. Regulations

2. Review of rates—Filing of rate schedules
3. —Evidence
4. —Approval
5. —Adjustment

1. Regulations

The insurance commissioner may issue regulations defining the criteria which medical service corporations must satisfy before their rates will comply with the standards set forth in this chapter. *New Hampshire-Vermont Physician Serv. v. Durkin*, 113 N.H. 717, 313 A.2d 416, 1973 N.H. LEXIS 359 (1973).

2. Review of rates—Filing of rate schedules

The insurance commissioner could order a rate reduction even though no rate filing had been made. *New Hampshire-Vermont Physician Serv. v. Durkin*, 113 N.H. 717, 313 A.2d 416, 1973 N.H. LEXIS 359 (1973).

3. —Evidence

Orders of commissioner relating to rates could not stand where they were based on conclusory opinions and the commissioner did not specify the facts upon which the orders were based. *New Hampshire-Vermont Physician Serv. v. Durkin*, 113 N.H. 717, 313 A.2d 416, 1973 N.H. LEXIS 359 (1973).

4. —Approval

Insurer failed to prove that it met statutory requirements of obtaining approval of insurance commissioner for changes to policies where the insurer's amended regulation was not approved by the commissioner, the regulation was stipulated to be an “internal document,” and the record showed that the insurer attempted to change its prior interpretation of the contract rather than modify the language and specifically get approval from the commissioner of insurance. *Trombly v. Blue Cross/Blue Shield*, 120 N.H. 764, 423 A.2d 980, 1980 N.H. LEXIS 400 (1980).

5. —Adjustment

The insurance commissioner could order 2.5% medical service rate decrease where he had established a rule lowering the contingency reserve and thus allowing a lower rate schedule, and could order a 6.5% rate decrease where he found that adjustments in the valuation of assets and liabilities and anticipated improvements in and corrections of projected operations would amount to such a decrease, for the decreases were merely mechanical adjustments to insure compliance with the rules. *New Hampshire-Vermont Physician Serv. v. Durkin*, 113 N.H. 717, 313 A.2d 416, 1973 N.H. LEXIS 359 (1973).

420-A:9. Contracts with Subscribers.

Every contract between a health service corporation and a subscriber shall be in writing, a copy of which shall be furnished to the subscriber and shall contain the following provisions:

I. A statement of the amount payable to the health service corporation by the subscriber and the manner in which such amount is payable.

II. A statement of the nature and extent of the benefits to be provided, and, if any benefits are to be limited or excepted, an enumeration of such limitations or exceptions shall be printed with the same prominence as the statement of the benefits conferred.

III. A statement that a maternity benefits rider will be made available at the subscriber's request, if maternity care is not covered under the contract. Nothing in this paragraph shall be construed to apply to supplemental health insurance and disability insurance policies.

IV. A statement of the terms and conditions upon which the contract may be cancelled or otherwise terminated at the option of either party.

V. A statement that the contract includes the endorsements thereon and attached papers, if any, and that it comprises the entire contract.

VI. A provision that no statement by the subscriber in the application for a contract shall void the contract or be used in any legal proceeding thereunder unless such application or an exact copy is included or attached to the contract.

VII. A statement of the period of grace which will be allowed the subscriber for making any payment due under the contract. Such period shall be not less than 10 days.

VIII. Notwithstanding any provision of any policy of insurance issued under the provisions of this section, whenever such policy provides for reimbursement for any service which may be legally performed by a person licensed as an advanced registered nurse practitioner, reimbursement under such policy shall not be denied when such service is rendered by a person so licensed.

IX. No health service corporation shall, when issuing or renewing a policy or contract of insurance or any certificate under such policy or contract covered by this chapter, deny coverage or limit coverage to any resident of this state on the basis of health risk or condition except that a waiting period consistent with insurance department rules may be imposed for pre-existing medical conditions. If a health service corporation accepts an application for group coverage, such acceptance shall be subject to the following:

(a) If the group has coverage in effect through another plan, the health service corporation shall accept all persons covered under the existing plan. If the group does not have coverage in effect through another plan, the health service corporation shall accept all persons for which the group seeks coverage.

(b) Once a group policy has been issued, any person becoming eligible for coverage shall become covered by enrolling within 31 days after becoming eligible. Any person so enrolling shall not be required to submit evidence of insurability based on medical conditions. If a person does not enroll at this time, such person is a late enrollee.

(c) Once a group policy has been issued, the health service corporation shall provide the group with an annual open enrollment period for late enrollees. During the open enrollment period, any late enrollee shall be permitted to enroll without submitting any evidence of insurability based on medical conditions. For late enrollees only, the pre-existing condition provisions shall apply for 18 months from the date of enrollment.

X. An insurer issuing policies of group insurance shall allocate the costs associated with maternity and childbirth over both males and females covered by its entire block of business in this state. In cases in which, because of the amount written in the state, allocation to an entire block of business needs to occur, the carrier may apply for a waiver from the commissioner.

XI. A statement allowing subscribers with medicare supplement insurance benefits a period of at least one year after the incurrance of a covered expense within which the subscriber shall furnish any proof of loss required by the insurer. Failure to furnish such proof within such time shall not invalidate or reduce any claim if it shall be shown not to have been reasonably possible to furnish such proof and such proof was furnished as soon as was reasonably possible.

XII. A provision that such contract shall be signed by the president and secretary before it shall become effective.

XIII. A statement that all benefits payable shall be paid to the participating providers except those in reimbursement of payments made by the subscriber to a non-participating provider and for which the corporation was liable at the time of payment.

Source.

1997, 190:1, eff. Jan. 1, 1998.

NOTES TO DECISIONS

Internal regulation

Because internal regulation concerning provision of health care benefits never became a rider or "attached paper," it could not be considered a part of the contract between the insurer and subscribers for insurance coverage until appropriate steps for insurance commissioner approval were taken. *Trombly v. Blue Cross/Blue Shield*, 120 N.H. 764, 423 A.2d 980, 1980 N.H. LEXIS 400 (1980) (Decided under prior law.)

RESEARCH REFERENCES

ALR.

Sufficiency of insurer's compliance with statutory requisites as to attaching copy of application to, or making it part of, policy. 18 A.L.R.3d 760.

Validity and construction of statutes relating to style of prominence with which provisions must be printed in insurance policy. 36 A.L.R.3d 464.

420-A:10. Part-Time Employees.

A health service corporation shall not exclude part-time employees and shall offer the same insurance benefits to part-time employees as it offers to the employee groups of which the part-time employees would be members if they were full-time employees. The insurer shall offer to include the part-time employees as part of the employer's employee group, at the full rate to be paid by the employer, at a rate prorated between the employer and the employee, or at the employee's expense. A part-time employee shall be any employee who regu-

larly works at least half of the weekly hours of the full-time employee in the employee group of which the part-time employee would be a member if such employee were a full-time employee, but who works a minimum of at least 15 hours per week.

Source.

1997, 190:1, eff. Jan. 1, 1998.

Cross References.

Offering by health maintenance organizations of insurance benefits to part-time employees, see RSA 420-B:12.

Offering of group health benefits to part-time employees generally, see RSA 415:18.

420-A:10-a. Dependent Coverage.

I. A policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any 2 or more eligible members of that family, including husband, wife, dependent children or any dependent under age 26. In this section "dependent" means a subscriber's child by blood or by law, who:

- (a) Is less than 26 years of age;
- (b) Is unmarried;

(c) Is a resident of New Hampshire or is enrolled as a student at a public or private institution of higher education; and

(d) Is not provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, church plan, or health benefits plan, or entitled to benefits under Title XVIII of the Social Security Act, Public Law 89-97, 42 U.S.C. 1395 et seq.

II. Nothing in this section shall be construed to require:

(a) Coverage for services provided to a dependent before the effective date of this section; or

(b) That an employer pay all or part of the cost of family coverage that includes a dependent as provided pursuant to this section.

III. A subscriber that elects family coverage during any applicable open enrollment period may enroll any dependent eligible pursuant to this section.

IV. Coverage for a dependent provided pursuant to this section shall be provided until the earlier of the following:

(a) The dependent is disqualified for dependent status as set forth in paragraph I of this section; or

(b) The date upon which the employer under whose contract coverage is provided to a dependent ceases to provide coverage to the subscriber.

V. Nothing in this section shall be construed to permit a health insurance carrier to refuse an election for coverage by a dependent pursuant to paragraph III, based upon the dependent's prior disqualification pursuant to subparagraph IV(a).

VI. (a) Notice regarding coverage for a dependent as provided pursuant to this section shall be provided to a subscriber:

(1) In the certificate of coverage prepared for subscribers on or about the date of commencement of coverage; and

(2) Within 30 days following the effective date of this section.

(b) Such notice shall include information regarding the required special open enrollment period.

Source.

2007, 352:2, eff. September 15, 2007.

420-A:11. Cancellation or Nonrenewal of Group Insurance Contracts.

No group accident or health insurance contract, authorized under this chapter, may be cancelled or nonrenewed by the health service corporation, except for nonpayment of premium, unless the group contract holder receives either a notice of cancellation or nonrenewal or an offer of renewal in accordance with this section. The notice of cancellation or nonrenewal or offer of renewal shall be delivered to the group contract holder or mailed to the group contract holder's last address as shown in the records of the health service corporation at least 45 days prior to the renewal date of the contract. Notice of cancellation for lack of participation, if permitted by the terms of the contract, shall be delivered to the group contract holder or mailed to the group contract holder's last address as shown in the records of the health service corporation, at least 30 days prior to the effective date of the cancellation.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:12. Cancellation or Nonrenewal of Non-Group Insurance Contracts.

No non-group accident or health insurance contract, authorized under this chapter, may be cancelled or nonrenewed by the health service corporation except for nonpayment of premium, unless the insured receives either a notice of cancellation or nonrenewal or an offer of renewal in accordance with this section. The notice of cancellation or nonrenewal or offer of renewal shall be delivered to the insured or mailed to the insured's last address as shown in the records of the health service corporation at least 30 days prior to the renewal date of the contract.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:13. Coverage for Autologous Bone Marrow Transplant.

Every health service corporation, and every

other similar corporation licensed under the laws of another state, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for expenses arising from the treatment of breast cancer by autologous bone marrow transplants according to protocols reviewed and approved by the National Cancer Institute.

Source.
1997, 190:1, eff. Jan. 1, 1998.

420-A:14. Coverage for Scalp Hair Prostheses.

I. Every health service corporation and every other similar corporation licensed under the laws of another state, which provides coverage for other prostheses, shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state and whose principal place of employment is in this state, coverage for expenses for scalp hair prostheses worn for hair loss suffered as a result of alopecia areata, alopecia totalis, alopecia medicamentosa resulting from the treatment from any form of cancer or leukemia, or permanent loss of scalp hair due to injury. Such coverage, however, shall be subject to a written recommendation by the treating physician stating that the hair prosthesis is a medical necessity. Such coverage shall be subject to the same limitations and guidelines as other prostheses, provided, that such coverage for alopecia medicamentosa shall not exceed \$350 per year.

- II. For the purposes of this section:
- (a) "Prostheses" means artificial appliances used to replace lost natural structures. Prostheses include, but are not limited to, artificial arms, legs, breasts, or glass eyes.
 - (b) "Scalp hair prostheses" means artificial substitutes for scalp hair that are made specifically for a specific individual.

Source.
1997, 190:1, eff. Jan. 1, 1998. 2001, 276:4, eff. Sept. 14, 2001.

Amendments
—2001. Paragraph I: Inserted "alopecia medicamentosa resulting from the treatment from any form of cancer or leukemia" following "alopecia totalis" in the first sentence and added "provided, that such coverage for alopecia medicamentosa shall not exceed \$350 per year" following "prostheses" in the third sentence.

420-A:15. Coverage During Adoption Proceedings.

All contracts issued by a health service corporation which provide coverage for a family member of the subscriber shall, as to such family member's coverage, also provide that health

insurance benefits applicable for children are payable with respect to any minor from the date such minor is placed in the custody of the subscriber pursuant to an adoption proceeding under the provisions of RSA 170-B. Such health insurance benefits shall terminate upon dismissal or withdrawal of the petition for adoption.

Source.
1997, 190:1, eff. Jan. 1, 1998.

420-A:15-a. Third-Party Payment of Covered, Court-Ordered Services.

The existence of a court order under RSA 169-B, RSA 169-C, or RSA 169-D for a service, program, or placement that is covered under any insurance for the minor shall not be considered in determining qualification for third-party payment under such insurance. Benefits for such services shall be subject to the same dollar limits, deductibles, co-payments and co-insurance factors and to the terms and conditions of the policy or certificate, including any managed care provisions. However, the claimant or claimant's representative shall have 48 hours from the commencement of a court-ordered service, placement, or program to seek any pre-authorization, pre-certification, or referral required under the terms of the policy. The determination of these preservice claims for court-ordered services for a minor shall be made as soon as possible, taking into account the medical exigencies, but in no event later than 48 hours after receipt of the request and sufficient information, unless the claimant or claimant's representative fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable. In the case of such failure, the insurer shall notify the claimant or claimant's representative within 24 hours of receipt of the request and shall advise the claimant or claimant's representative of the specific information necessary to determine to what extent benefits are covered or payable. The claimant or claimant's representative shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours, to provide the specified information. Thereafter, notification of the claim determination shall be made as soon as possible, but in no case later than 48 hours after the earlier of:

- I. The insurer's receipt of the specified additional information; or
- II. The end of the period afforded the claimant or claimant's representative to provide the specified additional information.

Source.
2004, 117:2, eff. Aug. 15, 2004.

[RSA 420-A:15-b effective January 1, 2008.]

420-A:15-b. Coverage for Dependents.

If the coverage for dependent children includes coverage for dependent children who are full-time students, as defined by the appropriate educational institution, beyond the age of 18, such dependent coverage shall include coverage for a dependent's medically necessary leave of absence from school for a period not to exceed 12 months or the date on which coverage would otherwise end pursuant to the terms and conditions of the policy, whichever comes first. Any breaks in the school semester shall not disqualify the dependent child from coverage under this section. Documentation and certification of the medical necessity of a leave of absence shall be submitted to the insurer by the student's attending physician and shall be considered prima facie evidence of entitlement to coverage under this section. The date of the documentation and certification of the medical necessity of a leave of absence shall be the date the insurance coverage under this section commences.

Source.

2007, 289:13, eff. January 1, 2008.

420-A:16. Notification of Allowable Benefit.

All health service corporations and every other similar corporation licensed under the laws of another state shall provide to each subscriber, on request, a written statement of the dollar amount of allowable benefit for any procedure which is requested by the appropriate procedure code.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:16-a. Patients' Bill of Rights.

Every health service corporation and every other similar corporation licensed under the laws of another state shall provide to each new subscriber who is a resident of this state a copy of the patients' bill of rights law under RSA 151:21.

Source.

1997, 331:19, eff. at 12:01 a.m., Jan. 1, 1998.

420-A:17. Coverage for Nonprescription Enteral Formulas.

I. Every health service corporation and every other similar corporation licensed under the laws of another state that issues or renews any policy of individual or group blanket accident or health insurance providing benefits for medical or hospital expenses shall provide to each indi-

vidual or group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for the provision of nonprescription enteral formulas for the treatment of impaired absorption of nutrients caused by disorders affecting the absorptive surface, functional length, or motility of the gastrointestinal tract. Such coverage shall be provided when the prescribing physician has issued a written order stating that the enteral formula is needed to sustain life, is medically necessary, and is the least restrictive and most cost effective means for meeting the needs of the patient.

II. Every health service corporation and every other similar corporation licensed under the laws of another state that issues or renews any policy of individual or group blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide to each individual or group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for the provision of nonprescription enteral formulas and food products required for persons with inherited diseases of amino acids and organic acids. Such coverage shall be provided when the prescribing physician has issued a written order stating that the enteral formula or food product is medically necessary and is the least restrictive and most cost effective means for meeting the needs of the patient. Coverage for inherited diseases of amino acids and organic acids shall, in addition to the enteral formula, include food products modified to be low protein in an amount not to exceed \$1,800 annually for any insured individual.

III. The benefits included in this section shall not be subject to any greater deductible than any other benefits provided by the insurer. The coinsurance required by the enrolled participant shall not exceed the amount allowed under the contract for the reasonable and customary charge for the service provided.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:17-a. Coverage for Diabetes Services and Supplies.

Every health service corporation and every similar corporation licensed under the laws of another state that issues or renews any policy, plan, or contract of individual or group or blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide to each individual or group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for the medically appropriate and necessary outpatient self-management training and educational services, pursuant to a written order of a primary care physician or

practitioner, including but not limited to medical nutrition therapy for the treatment of diabetes, provided by a certified, registered or licensed health care professional with expertise in diabetes, subject to the terms and conditions of the policy. Each health service corporation that issues or renews any individual or group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover medically appropriate or necessary insulin, oral agents and equipment used to treat diabetes subject to the terms and conditions of the policy. Each health service corporation that issues or renews any individual or group or blanket policy, plan, or contract of accident or health insurance providing benefits for medical or hospital expenses which provides for durable medical equipment coverage shall provide coverage for medically appropriate or necessary equipment used to treat diabetes subject to the terms and conditions of the policy.

Source.
1997, 258:7, eff. at 12:01 a.m., Jan. 1, 1998.

Contingent enactment.
1997, 258:5, provided for the enactment of this section. However, under the terms of 1997, 258:8, eff. Jan. 1, 1998, the enactment did not take effect.

420-A:17-b. Health Service Corporations; Coverage for Dental Procedures; Age for Covered Service Increased.

I. Every health service corporation and every similar corporation licensed under the laws of another state that issues or renews any group policy or blanket accident or health insurance providing benefits for medical or hospital expenses, shall provide to each covered individual or certificate holder who is a resident of New Hampshire coverage for the medically necessary hospital or surgical day care facility charges and administration of general anesthesia administered by a licensed anesthesiologist or anesthesiologist for dental procedures performed on a covered person who:

(a) Is a child under the age of 6 who is determined by a licensed dentist in conjunction with a licensed primary care physician to have a dental condition of significant dental complexity which requires certain dental procedures to be performed in a surgical day care facility or hospital setting; or

(b) Is a person who has exceptional medical circumstances or a developmental disability as determined by a licensed primary care physician which place the person at serious risk.

II. All of the terms and conditions of the covered person's policy shall apply to these services.

Source.
1998, 280:3, eff. Jan. 1, 1999. 2003, 278:3, eff. Jan. 1, 2004.

Amendments
—2003. Paragraph I(a): Substituted “age of 6” for “age of 4”.

420-A:17-c. Coverage for Prescription Contraceptive Drugs and Prescription Contraceptive Devices and for Contraceptive Services.

Every health service corporation and every other similar corporation licensed under the laws of another state that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical or hospital expenses, which provides coverage for outpatient services shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for outpatient contraceptive services under the same terms and conditions as for other outpatient services. “Outpatient contraceptive services” means consultations, examinations, and medical services, provided on an outpatient basis and related to the use of contraceptive methods to prevent pregnancy which has been approved by the U.S. Food and Drug Administration. Each health service corporation and every other similar corporation licensed under the laws of a different state that issues or renews any group or blanket policy of accident or health insurance providing benefits for medical or hospital expenses which provides a prescription rider shall cover all prescription contraceptive drugs and prescription contraceptive devices approved by the U.S. Food and Drug Administration under the same terms and conditions as other prescription drugs. Nothing in this section shall be construed as altering the terms and conditions of a contract relating to prescription drugs and outpatient services.

Source.
1999, 252:2, eff. Jan. 1, 2000.

420-A:17-d. Prompt Payment Required.

I. (a) Every health service corporation, and every other similar corporation licensed under the laws of another state that issues or renews any policy of individual or group blanket accident or health insurance providing benefits for medical or hospital expenses for its insured persons shall pay for services rendered by New Hampshire health care providers within 30 calendar days upon receipt of a clean non-electronic claim or 15 calendar days upon receipt of a clean electronic claim.

(b) When the health service corporation is denying or pending the claim, the corporation shall have 15 calendar days upon receipt of an electronic claim or 30 days upon receipt of a non-electronic claim to notify the health care provider or subscriber of the reason for denying

or pending the claim and what, if any, additional information is required to adjudicate the claim. Upon the health service corporation's receipt of the requested additional information, the health service corporation shall adjudicate the claim within 45 calendar days. If the required notice is not provided, the claim shall be treated as a clean claim and shall be adjudicated pursuant to subparagraph (a).

(c) Payment of a claim shall be considered to be made on the date a check was issued or electronically transferred. The health services corporation shall mail checks no later than 5 business days after the date a check was issued. Failure to mail a check within 5 business days shall constitute a violation subject to enforcement under RSA 415:20.

(d) The corporation's failure to comply with the time limits in this section shall not have the effect of requiring coverage for an otherwise non-covered claim. This section shall only apply to payments made on a claims basis and shall not apply to capitation or other forms of periodic payment.

II. In this section:

(a) "Clean claim" means a claim for payment of covered health care expenses that is submitted to a health service corporation on the corporation's standard claim form using the most current published procedural codes, with all the required fields completed with correct and complete information in accordance with the corporation's published filing requirements.

(b) "Electronic claim" means the transmission of data for purposes of payment of covered health care services in an electronic data format specified by the corporation and, if covered by the Health Insurance Portability and Accountability Act (HIPAA), is in such form and substance as to be in compliance with such act.

III. Any initial clean claim submission not paid within the time periods specified in subparagraph I(a) shall be deemed overdue. In that case:

(a) The health service corporation shall pay the health care provider or the insured person the amount of the overdue claim plus an interest payment of 1.5 percent per month beginning from the date the payment was due; and

(b) The health care provider may recover from the health service corporation, upon a judicial finding of bad faith, reasonable attorney's fees for advising and representing a health care provider in a successful action against an health service corporation for payment of the claim.

IV. Exceptions to the requirements of this section are as follows:

(a) No health service corporation shall be in violation of this section for a claim submitted by a health care provider if:

(1) Failure to comply is caused by a directive from a court or a federal or state agency;

(2) The corporation is in liquidation or rehabilitation or is operating in compliance with a court-ordered plan of rehabilitation; or

(3) The corporation's compliance is rendered impossible due to matters beyond the corporation's control which are not caused by such corporation.

(b) No health service corporation shall be in violation of this section for any claim submitted more than 90 days after the service was rendered.

(c) No health service corporation shall be in violation of this section while the claim is pending due to a fraud investigation that has been reported to a state or federal agency, or an internal or external review process.

V. The commissioner may assess an administrative fine against any health service corporation or may suspend or revoke the license or certificate of authority of any health service corporation after determining that the health service corporation has established a pattern of overdue payments and that the contemplated enforcement action would not promote the deterioration of the financial condition of an at-risk insurer. Such fine shall be up to \$5,000 per violation, not to exceed \$100,000. Nothing in this paragraph shall be construed to alter the commissioner's authority to investigate or take action, including, but not limited to, action pursuant to RSA 415:20, in response to individual instances of noncompliance.

Source.

2000, 274:4, eff. Jan. 1, 2001; 314:4, eff. Jan. 1, 2001. 2005, 162:3, eff. Sept. 19, 2005.

Editor's note.

During the 2000 session, this section was enacted twice, by chs. 274 and 314 and both versions were identical to each other.

Amendments

—2005. Paragraph I: Rewritten to the extent that a detailed comparison would be impracticable.

Paragraph II(b): Added "and, if covered by the Health Insurance Portability and Accountability Act (HIPAA), is in such form and substance as to be in compliance with such act".

Paragraph III: Rewrote the introductory paragraph, and inserted "insurer shall pay the health care provider or the insured person the" and substituted "plus" for "shall include" in subpar. (a).

Paragraph V: Added the third sentence.

420-A:17-e. Retroactive Denials Prohibited; Exceptions.

I. In this section "retroactive denial of a previously paid claim" means any attempt by a health service corporation to retroactively collect payments already made to a health care provider with respect to a claim by requiring repayment of such payments, reducing other payments currently owed to the provider, withholding or setting off against future payments, reducing or affecting the future claim payments to the provider in any other manner.

II. No health service corporation shall impose on any health care provider any retroactive denial of a previously paid claim or any part thereof unless:

(a) The corporation has provided the reason for the retroactive denial in writing to the health care provider; and

(b) The time which has lapsed since the date of payment of the challenged claim does not exceed 18 months. The retroactive denial of a previously paid claim may be permitted beyond 18 months from the date of payment only for the following reasons:

(1) The claim was submitted fraudulently;

(2) The claim payment was incorrect because the physician/provider or the insured was already paid for the health care services identified in the claim;

(3) The health care services identified in the claim were not delivered by the physician/provider;

(4) The claim payment was for services covered by Title XVIII, Title XIX, or Title XXI of the Social Security Act;

(5) The claim payment is the subject of an adjustment with a different insurer, administrator, or payor and such adjustment is not affected by a contractual relationship, association, or affiliation involving claims payment, processing, or pricing; or

(6) The claim payment is the subject of legal action.

III. A health service corporation shall notify a health care provider at least 15 days in advance of the imposition of any retroactive denials of previously paid claims. The health care provider shall have 6 months from the date of notification under this paragraph to determine whether the insured has other appropriate insurance, which was in effect on the date of service. Notwithstanding the contractual terms between the health service corporation and provider, the health service corporation shall allow for the submission of a claim that was previously denied by another insurer due to the insured's transfer or termination of coverage.

Source.
2002, 143:3, eff. Jan. 1, 2003. 2006, 104:3, eff. August 7, 2006.

References in text.
Titles XVIII, XIX and XXI of the Social Security Act, referred to in par. II(b)(4), are classified to 42 U.S.C.S. §§ 1395 et seq., 1396 et seq., and 1397aa et seq., respectively.

Amendments
—2006. Paragraph II(b)(5): Inserted “an” preceding “adjustment with”, and substituted “a different insurer” for “another insurer” thereafter, and inserted “and such adjustment is not affected by a contractual relationship, association, or affiliation involving claims payment, processing, or pricing” following “payor”.

420-A:17-f. Coverage for Certified Midwives.

Every health service corporation and every

other similar corporation licensed under the laws of another state that issues or renews any policy of group or blanket accident or health insurance providing maternity benefits shall also provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage consistent with the terms and conditions of the policy for services rendered by a midwife certified under RSA 326-D. Such coverage shall be subject to each insurer's standards and mechanisms for credentialing and contracting pursuant to RSA 420-J:4 and RSA 420-J:8 respectively, where applicable, and contingent upon services being provided in a licensed health care facility and within the scope of practice of a certified midwife. Benefits provided shall not be subject to any greater co-payment, deductible, or coinsurance than any other similar benefits provided by the insurer.

Source.
2006, 8:3, eff. April 14, 2006.

420-A:17-g. Coverage for Children's Early Intervention Services.

Every health service corporation and every other similar corporation licensed under the laws of another state that issues or renews any policy of group or blanket accident or health insurance providing benefits for medical, rehabilitation, or hospital expenses, which provides coverage for outpatient services shall provide to each group, or to the portion of each group comprised of certificate holders of such insurance who are residents of this state, coverage for expenses arising from the services of licensed and credentialed occupational therapists, physical therapists, speech-language pathologists, and clinical social workers working with children from birth to 36 months of age with an identified developmental disability and/or delay as specified in rules adopted pursuant to RSA 171-A:18, IV as long as the providing therapist receives a referral from the child's primary care physician if applicable. The benefits included in this section may be subject to deductibles, co-payments, co-insurance, or other terms and conditions of the policy, and may have a cap of \$3,200 per child per year not to exceed \$9,600 by the child's third birthday. Notwithstanding any provision of law or rule to the contrary, the coverage under this section shall apply to the medical assistance program, pursuant to RSA 161 and RSA 167.

Source.
2007, 338:3, eff. September 14, 2007.

420-A:18. Investments.

No health service corporation shall invest its funds otherwise than as provided in RSA 411-A relating to the investments and holding of real

estate by domestic life insurance companies; provided that not exceeding 10 percent of a health service corporation's total admitted assets may be invested in such investments as are prudent for a domestic life insurance company to make, and provided further that, notwithstanding RSA 411-A:12, no such health service corporation may acquire and hold directly or indirectly through its subsidiaries or affiliates more than 10 percent of the outstanding voting stock of any life insurance company formed under the laws of this or another state or any corporation owning or holding the stock of such life insurance company.

Source.

1997, 190:1, eff. Jan. 1, 1998.

Cross References.

Investments of savings banks, see RSA 387.

420-A:19. Prohibiting Limitations on Liability; Disclosure of Information.

I. No contract between a health service corporation and a physician, for the purpose of delineating the rights and obligations of the parties within the provider network, shall limit the liability of the health service corporation for any actions of the physician for which the health service corporation might otherwise be liable.

II. No contract between a health service corporation and a health care provider shall limit what information such health care provider may disclose to patients or to prospective patients regarding the provisions, terms, or requirements of the health service corporation's products as they relate to the needs of such provider's patients except for trade secrets of significant competitive value.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:20. Reports and Examinations.

Every health service corporation shall annually, on or before March 1, file in the office of the commissioner a statement, verified by at least 2 of its principal officers, showing its condition on the preceding December 31, which shall be in such form and contain such matters as the commissioner may prescribe. Examination of the financial condition of each health service corporation by the commissioner shall be made as often as the commissioner deems necessary. The commissioner or designee shall have the power of visitation and examination into the affairs of any health service corporation and free access to all of the books, papers, and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath and examine its officers,

agents, or employees or other persons in relation to the affairs, transactions, and condition of the corporation. All costs of such examination shall be paid by the health service corporation.

Source.

1997, 190:1, eff. Jan. 1, 1998.

Cross References.

Examinations by commissioner generally, see RSA 400-A:37.

Reports generally, see RSA 400-A:36.

420-A:21. Reserves.

Every health service corporation shall collect reasonable rates as described in RSA 420-A:22, designed to permit it to accumulate and maintain a contingency reserve fund.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:22. Annual Review.

Annually, in the month of April, the commissioner may review the rates of every health service corporation, and shall, not later than 60 days after April 1 of each year, provided that the corporation has filed all pertinent data, make adjustments thereto, if any, as are just and reasonable. Whenever the contingency reserve fund of a health service corporation shall be less than 8 percent of its annual premium income, the commissioner shall permit the corporation to charge rates designed to enable it to increase its contingency reserve fund by an amount equal to at least 2 percent of the annual premium income of the corporation. If the liabilities of a health service corporation exceed its assets, however, the commissioner shall permit the corporation to charge rates designed to enable the corporation to accumulate such a reserve fund by an amount equal to at least 5 percent of the annual premium income of the corporation until such time as the assets of the corporation equal its liabilities. In no event shall the commissioner permit a health service corporation to charge rates which would result in a reserve fund in excess of 20 percent of the annual premium volume of the corporation. This section shall not preclude the granting of appropriate rate changes at any other times. In connection with a rate decision, the commissioner may also make reasonable supplemental orders to the health service corporation and may attach reasonable conditions and limitations to such orders as the commissioner finds, on the basis of competent and substantial evidence, necessary to insure that benefits and services are provided at minimum cost under efficient and economical management of the corporation.

Source.

1997, 190:1, eff. Jan. 1, 1998.

NOTES TO DECISIONS

ANNOTATIONS DECIDED UNDER PRIOR LAW

1. Annual rate review—Generally
2. —Adjustment of rates
3. —Findings
4. —Report
5. Supplemental orders—Generally
6. —Sanctions for noncompliance
7. Supervisory powers of commissioner

1. Annual rate review—Generally

Annual April review by insurance commissioner of rates of nonprofit health service corporation is mandatory. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

The mandatory language of this section requires the insurance commissioner to initiate the rate review annually in April and to adjust a corporation's rates if its contingency reserve fund is higher or lower than the levels set by this section. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

In the annual April review of the rates of nonprofit health service corporations provided for by this section, the insurance commissioner must examine whether a rate adjustment is needed in order to bring the contingency reserve fund within the statutorily prescribed limits. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

A formal request for specific rate relief is unnecessary under this section. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

2. —Adjustment of rates

The insurance commissioner must grant an annual rate adjustment when a nonprofit medical service corporation's contingency reserve fund is insufficient. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

3. —Findings

Specific basic findings must accompany any order of the insurance commissioner providing for a rate adjustment which is made under this section to bring a corporation's contingency reserve fund to the proper level. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

Because a decision or order relating to annual review of rates of nonprofit health service corporations is subject to review under RSA 541, the principles concerning findings, which require that they be set forth fully and accurately in order to permit meaningful review, are applicable to this section. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

Under this section, the insurance commissioner's methodology and findings must be written and made available not later than sixty days after the first of April of each year, provided that the corporation has filed all pertinent data. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

4. —Report

Where a report of the insurance commissioner pursuant to his annual rate review of a nonprofit medical service corporation required by this section did not address the corporation's contingency reserve fund, the report did not comply with the section. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

5. Supplemental orders—Generally

Although reasonable supplemental orders and reasonable conditions and limitations may be issued by the insurance

commissioner in connection with a rate decision, they may not be made conditions precedent to a rate increase under this section. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

6. —Sanctions for noncompliance

If reasonable conditions and limitations are attached to an order by the insurance commissioner to a nonprofit medical service corporation under this section, and such conditions and limitations are not complied with by the corporation, the commissioner cannot apply sanctions since no sanctions are included in the section. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

7. Supervisory powers of commissioner

Although this section mandates that the insurance commissioner adjust rates whenever a corporation's contingency reserve fund fails to fall within the statutory range, the legislature did not intend to eliminate the commissioner's supervisory powers, since he is authorized to supervise nonprofit health service corporations and curtail inefficient practices, excessive administrative expenditures, excessive payments to subscribers, and any other practice which unnecessarily increases the costs of benefits and services. *New Hampshire-Vermont Health Service v. Commissioner of Insurance*, 122 N.H. 268, 444 A.2d 508, 1982 N.H. LEXIS 352 (1982).

420-A:23. Appeals.

All orders and decisions of the commissioner concerning matters within the commissioner's jurisdiction under this chapter shall be subject to rehearing and appeal as provided in RSA 541. RSA 541:18 and RSA 541:19 shall apply to orders and decisions of the insurance commissioner affecting the rates of health service corporations.

Source.

1997, 190:1, eff. Jan. 1, 1998.

NOTES TO DECISIONS

1. Purpose
2. Construction

1. Purpose

The sole purpose of the legislature in enacting this section was to make RSA 541:18 and 541:19 applicable to hospital service corporations. *New Hampshire-Vermont Hospitalization Serv. v. Whaland*, 113 N.H. 461, 113 N.H. 465, 309 A.2d 508, 1973 N.H. LEXIS 297 (1973) (Decided under prior law.)

2. Construction

This section equates hospital service corporations and public utilities with respect to the power of the supreme court to grant temporary rates, and authorizes the court to allow as temporary rates proposed rates which have been filed but not yet approved by the commissioner. *New Hampshire-Vermont Hospitalization Serv. v. Whaland*, 113 N.H. 461, 113 N.H. 465, 309 A.2d 508, 1973 N.H. LEXIS 297 (1973) (Decided under prior law.)

420-A:24. Agreements with Providers.

Any health service corporation may enter into agreements with eligible persons whereby such persons become providers of a plan operated by the corporation. Any health service corporation may enter into contracts for the payment of health services to the subscribers or members of

similar nonprofit health service corporations of other states subject to the supervision of such other states, or of counties of this state in which the corporation does not transact business. The corporation shall maintain in its office complete records of all health services rendered to subscribers and covered dependents in such form as will include the kind of services rendered, the amounts claimed for such services by the providers and the amount paid by the corporation.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:25. Administrative Services.

Any health service corporation may contract to furnish administrative services to any health-related organization, agency, entity, or plan.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:26. Nonliability of Corporation.

No health service corporation holding a license under this chapter shall be liable for injuries resulting from negligence, malfeasance, nonfeasance, or malpractice on the part of any officer or employee or on the part of any provider in the course of rendering health care service or supplies to subscribers.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:27. Taxation.

Except as otherwise expressly provided for by law, every health service corporation doing business pursuant to this chapter is hereby declared to be a nonprofit and benevolent organization and to be exempt from all taxes, other than taxes on real property situated within this state, fees on motor vehicles registered in this state, fees prescribed by this chapter, and the premium tax under RSA 400-A:32. Except for payments made by the state of New Hampshire no tax shall be levied on any premiums, fees-for-service and other payments for health, dental, and employee benefit coverages from political subdivisions of the state of New Hampshire, or from employees or retirees of such political subdivisions, either directly or indirectly. Nor shall any tax be levied on any revenues of such a health service corporation that are derived from any business of the corporation where the corporation has assumed no insurance risk and is providing administrative services only.

Source.

1997, 190:1, eff. Jan. 1, 1998.

Cross References.

Motor vehicle registration fees, see RSA 261:141 et seq.
Property taxes generally, see RSA 72:6 et seq.

420-A:28. Relationship of Provider and Patient.

Nothing in this chapter shall be deemed to alter the relationship of physician and patient. No health service corporation shall in any way influence the subscriber in the free choice of hospital or physician or other provider. Nothing in this chapter shall be deemed to abridge the right of any hospital, physician or other provider to decline patients in accordance with lawful standards and practices of such provider.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:29. Foreign Corporations; Reciprocity.

Any corporation organized under the laws of another state or country which except as to state of organization is a health service corporation and which the commissioner finds has fully complied with the laws of such other state or country, shall be entitled to do business within this state subject to this chapter after obtaining a license as provided in RSA 420-A:4; provided, however, that no such corporation organized under the laws of another state or country shall be entitled to such license, or to do business in this state, unless such other state or country grants substantially similar rights and privileges to health service corporations organized under the laws of this state. The commissioner shall determine whether rights and privileges granted by other states or countries are substantially similar to those granted by this state, and the commissioner's determination shall be final.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:30. Exceptions.

Fraternal benefit societies and life or accident insurance companies are not affected by this chapter.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:31. Rules.

The commissioner is authorized and empowered to adopt such rules in accordance with RSA 541-A which are reasonable and necessary to administer and enforce the provisions of this chapter.

Source.

1997, 190:1, eff. Jan. 1, 1998.

420-A:32. Workers' Compensation Law Not Affected.

No provision of this chapter or any contract

for hospital service by such health service corporation shall in any way affect the operation of workers' compensation laws of the state.

Cross References.

Workers' compensation generally, see RSA 281-A.

Source.

1997, 190:1, eff. Jan. 1, 1998.

**New Hampshire Secretary of State
Corporation Division**

Miscellaneous Forms and Fees

<u>Forms</u>	<u>Fees</u>
Cooperative Marketing and Rural Electrification Associations:	
Certificate of Organization — No standardized form available	\$25
Amendment to Certificate — No standardized form available	\$25
Certificate of Withdrawal — No standardized form available	\$25
Consumer Cooperative Associations:	
Certificate of Organization — No standardized form available	\$25
Form 40 CO-OP Certificate of Authority	\$50
Amendment to Certificate — No standardized form available	\$25
Merger — No standardized form available	\$25
Dissolution — No standardized form available	\$25
Foreign Limited Partnership:	
Form 1 Application for Reservation of Name	\$15
Form 3 Notice of Transfer of Reserved Name	\$15
FLP-1 Foreign Limited Partnership Application (Must be submitted with Form SRA, included)	\$100
Foreign Limited Partnership Amendment — No standardized form available	\$35
Foreign Limited Partnership Change of Agent — No standardized form available	\$35
Foreign Limited Partnership Withdrawal — No standardized form available	\$35
Foreign Partnership:	
FP-1 Foreign Partnership Application	\$50
FP-3 Foreign Partnership Amendment	\$35
FP-4 Foreign Partnership Change of Agent	\$15
FP-5 Foreign Partnership Cancellation	\$35
Limited Partnership:	
Form 1 Application for Reservation of Name	\$15
Form 3 Notice of Transfer of Reserved Name	\$15
LP-1 NH Limited Partnership Application (Must be submitted with Form SRA, included)	\$100
Restated Certificate of Limited Partnership — No standardized form available	\$35
NH Limited Partnership Amendment — No standardized form available	\$35
NH Limited Partnership Cancellation — No standardized form available	\$35

<u>Forms</u>	<u>Fees</u>
NH Limited Partnership Change of Agent — No standardized form available	\$35
NH Limited Partnership Conversion — No standardized form available	\$35
NH Limited Partnership Merger — No standardized form available	\$35
New Hampshire Investment Trusts:	
Form 1 Application for Reservation of Name	\$15
Form 3 Notice of Transfer of Reserved Name	\$15
Cancellation of Reservation — No standardized form available	\$15
Certificate of Trust — No standardized form available	\$100
Certificate of Amendment — No standardized form available	\$35
Certificate of Cancellation — No standardized form available	\$35
Certificate of Merger or Consolidation — No standardized form available	\$35
Certificate of Conversion:	
Form C2 NH General Partnership to a NH Limited Liability Company (Must be submitted with Form LLC-1 and Form SRA, included)	\$135
Form C3 NH General Partnership to a NH Limited Partnership (Must be submitted with Form LP-1 and Form SRA, included)	\$135
Form C4 Foreign Corporation to a NH Limited Liability Company (Must be submitted with Form LLC-1 and Form SRA, included)	\$135
Nonprofit:	
NP-1 NH Nonprofit Application	\$25
NP-3 NH Nonprofit Amendment	\$25
Nonprofit Merger — No standardized form available	\$25
NP-5 NH Nonprofit Dissolution	No Fee
FNP-1 Foreign Nonprofit Application	\$25
FNP-3 Foreign Nonprofit Amendment	\$25
FNP-5 Foreign Nonprofit Withdrawal	\$25
Form 9 Statement of Change of Registered Office or Registered Agent or Both	\$15
Trade Name:	
TN-1 Trade Name Registration	\$50
TN-5 Trade Name Addition in Partnership	\$10
TN-7 Trade Name Withdrawal in Partnership	\$10
TN-9 Trade Name Discontinuance	\$10
Trademark/Service mark:	
TM-1 Trademark Application	\$50
TM-7 Trademark Assignment	\$10

New Hampshire Secretary of State
Corporation Division

Business Corporation Act Forms

<u>Forms</u>	<u>Fees</u>
Form 1 Application for Reservation of Name	\$15
Form 3 Notice of Transfer of Reserved Name	\$15
Form 5 Application for Registration of Corporate Name	\$25
Form 7 Application for Renewal of Registered Name	\$25
Form 9 Statement of Change of Registered Office or Registered Agent or Both	\$15
Form 9-A Statement of change of Registered Office	\$15
Form 11 Articles of Incorporation (Must be submitted with Form SRA, included)	\$100
Form 11PC Article of Incorporation for a Professional Corporation (Must be submitted with Form SRA, included)	\$100
Form 14 Articles of Amendment to the Articles of Incorporation	\$35
Form 16 Restated Articles of Incorporation	\$15
Form 16-A Restated Articles of Incorporation Including Designated Amendment(s)	\$35
Form 21 Articles of Merger Between Domestic Corporations	\$35
Form 26 Articles of Merger Between Domestic and Foreign Corporations	\$35
Form 32 Articles of Dissolution By Incorporator(s) or Initial Directors	\$35
Form 34 Articles of Dissolution by Board of Directors and Shareholders	\$35
Form 36 Articles of Revocation of Dissolution	\$35
Form 40 Application for Certificate of Authority (Must be submitted with Form SRA, included)	\$100
Form 42 Application for Amended Certificate of Authority	\$35
Form 44 Application for Certificate of Withdrawal (Form AU-22, Certificate Request Form—to request tax certificate from Dept. of Revenue Admin.)	\$35
Foreign Corporation Plan of Merger (not involving a N.H. domestic corporation) Submit a certified copy of merger (certified by survivor's Secretary of State)	\$35
Form 47 Annual Report	Report Fee \$100 Late Fee \$50
Form 48 Articles of Exchange Between Domestic Corporations	\$35
Form 50 Articles of Exchange Between Domestic and Foreign Corporations	\$35
Form 52 Articles of Correction	\$35

**New Hampshire Secretary of State
Corporation Division**

Limited Liability Company Forms

<u>Forms</u>	<u>Fees</u>
Form 1 Application for Reservation of Name	\$15
Form 3 Notice of Transfer of Reservation of Name	\$15
Notice of Cancellation of Reservation — No standardized form available	\$15
LLC 1 Certificate of Formation (Must be submitted with Form SRA, included)	\$100
PLLC 1 Certificate of Formation for a Professional LLC (Must be submitted with Form SRA, included)	\$100
LLC 2 Change of Registered Agent/Registered Office	\$15
LLC 2-A Change of Registered Office	\$15
LLC 3 Certificate of Amendment	\$35
LLC 4 Restated Certificate of Formation	\$35
LLC 4-A Restated Certificate of Formation including amendment	\$35
Certificate of Merger Domestic — No standardized form available	\$35
Certificate of Merger Domestic and Foreign — No standardized form available	\$35
Foreign LLC Plan of Merger (not involving a N.H. domestic LLC) Submit a certified copy of merger (certified by survivor's Secretary of State)	\$35
LLC 7 Certificate of Cancellation	\$35
LLC 8 Annual Report	Report Fee \$100 Late Fee \$50
Form C1 NH Corporation to a NH Limited Liability Company (Must be submitted with Form LLC-1 and Form SRA, included)	\$135
Form C2 NH General Partnership to a NH Limited Liability Company (Must be submitted with Form LLC-1 and Form SRA, included)	\$135
Form C4 Foreign Corporation to a NH Limited Liability Company (Must be submitted with Form LLC-1 and Form SRA, included)	\$135
FLLC-1 Application for Foreign Limited Liability Company Registration (Must be submitted with Form SRA, included)	\$100
FPLLC-1 Application for Foreign Professional Limited Liability Company Registration (Must be submitted with Form SRA, included)	\$100
FLLC-2 Amendment to Application	\$35
FLLC-3 Certificate of Cancellation (AU-22 Certificate Request Form—to request tax certificate from Dept. of Revenue Admin.)	\$35

New Hampshire Secretary of State
Corporation Division

Limited Liability Partnership Forms

<u>Forms</u>	<u>Fees</u>
Form 1 Application for Reservation of Name	\$15
Form 3 Notice of Transfer of Reserved Name	\$15
Notice of Cancellation of Reservation — No standardized form available	\$15
LLP-1 Limited Liability Partnership Registration (Must be submitted with Form SRA, included)	\$100
LLP-2 Notice of Change (Amendment)	\$35
LLP-4 Withdrawal of NH Registration	\$35
LLP-5 Change of Registered Agent or Registered Office	\$15
LLP-5-A Change of Registered Office only	\$15
Annual Fee — No Standardized Form	\$100
Late Fee	\$50
FLLP-1 Notice of Foreign Limited Liability Partnership Registration (Must be submitted with Form SRA, included)	\$100
FLLP-2 Notice of Change (Amendment)	\$35
FLLP-3 Withdrawal of Foreign LLP	\$35

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For current forms please visit the New Hampshire Corporations website: <http://www.sos.nh.gov/corporate/Forms.html>

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State of New Hampshire

Filing fee: \$15.00
Use black print or type.

Form No. 1

APPLICATION FOR RESERVATION OF NAME
FOR:

CORPORATION, LIMITED LIABILITY COMPANY, REGISTERED LIMITED LIABILITY PARTNERSHIP, LIMITED PARTNERSHIP OR NEW HAMPSHIRE INVESTMENT TRUST

THE UNDERSIGNED APPLIES FOR RESERVATION OF THE FOLLOWING NAME FOR A PERIOD OF ONE HUNDRED TWENTY DAYS:

1) Application for Reservation of Name for:

2) Name Being Reserved Under (please check one box only):

- ☐ RSA 293-A:4.02 – Corporation under RSA 293-A:4.01 requires the name shall contain the word “corporation”, “incorporated”, “limited” or the abbreviation “corp.”, “inc.”, or “ltd.” or words or abbreviations of like import in another language.
- ☐ RSA 304-C:4 - Limited Liability Company under RSA 304-C:3 requires the name shall contain the words “limited liability company” or the abbreviation “L.L.C.” or similar abbreviation.
- ☐ RSA 304-A:46 - NEW HAMPSHIRE Limited Liability Partnership under RSA 304-A:45 requires the name shall contain the words “limited liability partnership” or the abbreviation “L.L.P.” or “LLP” as the last words or letters of its name.
- ☐ RSA 304 A:46 - FOREIGN Limited Liability Partnership under RSA 304-A:50 requires the name must contain the words “limited liability partnership”, “registered limited liability partnership” or “professional limited liability partnership”, or the abbreviation “L.L.P.”, “LLP”, “R.L.L.P.”, “P.L.L.P.”, “PLLP”, “P.L.L.” or “PLL” as the last words or letters of its name.
- ☐ RSA 304-B:3 - Limited Partnership under RSA 304-B:2 requires the name shall contain without abbreviation the words “limited partnership” as the last words of its name.
- ☐ RSA 293-B:16 II & III - New Hampshire Investment Trust under RSA 293-B:16.

3) Nature of Business (Required):

4) APPLICANT INFORMATION:

(Print Name of Applicant)

(No.)(Street)

(City/Town)(State)(Zip Code)

(Authorized Signature)(Title)

(Print or type name)(Date Signed)

DISCLAIMER: All documents filed with the Corporation Division will be publicly available for inspection, physically, electronically or in other media.

Phone Number: () E-mail

Mail fee with **ONE ORIGINAL** to: Corporation Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$15.00
Use black print or type.

Form No. 3

NOTICE OF TRANSFER OF RESERVED NAME OF

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, YOU ARE HEREBY NOTIFIED THAT THE UNDERSIGNED HAS TRANSFERRED TO _____

WHOSE ADDRESS IS _____

THE ABOVE NAME WHICH WAS RESERVED IN YOUR OFFICE FOR THE EXCLUSIVE USE OF THE UNDERSIGNED ON _____, _____ FOR A PERIOD OF ONE HUNDRED TWENTY DAYS THEREAFTER.

Dated _____, _____

(NOTE 1) _____
(Print name of original applicant)

_____ (No.)	_____ (Street)	_____ (City/Town)	_____ (State)	_____ (Zip Code)
_____ (Email Address)		_____ (Telephone Number)		
_____ Signature (Note 2)		Its	_____ Title	
_____ Print or type name				

- Notes: 1. Enter name of individual or name of business entity in whose name certificate of reservation was issued and address.
2. Signature of applicant for whom the name was reserved.

Please Note

Application for Registration of Corporation Name (Form 5) is ONLY used to protect the Names of Corporations that are NOT transacting business in New Hampshire.

To qualify to do business in New Hampshire, you must file an Application for Certificate of Authority (Form 40).

STATE OF NEW HAMPSHIRE

Registration fee: \$25.00
Use black print or type.

Form No. 5
RSA 293-A:4.03

APPLICATION FOR REGISTRATION OF CORPORATE NAME
(A FOR PROFIT FOREIGN CORPORATION)

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT,
THE UNDERSIGNED CORPORATION HEREBY APPLIES FOR THE REGISTRATION OF ITS
CORPORATE NAME TO AND INCLUDING DECEMBER 31, _____, AND SUBMITS THE
FOLLOWING STATEMENT:

FIRST: The name of the corporation is _____
_____.

SECOND: It is incorporated under the laws of _____.

THIRD: The date of its incorporation is _____.

FOURTH: It is carrying on or doing business.

FIFTH: The business in which it is engaged is _____

_____.

SIXTH: This Application is accompanied by: (a) a certificate setting forth that the corporation is in good
standing under the laws of _____ wherein it is incorporated, executed by the
official having custody of the records pertaining to corporations in that state or territory; and (b) a
registration fee of \$25.00 as required by such Section 1.22. (Note 1)

Dated _____, _____

(NOTE 2) _____
(Corporation Name)

(No.)	(Street)	(City/Town)	(State)	(Zip Code)
-------	----------	-------------	---------	------------

(Email Address)	(Telephone Number)
-----------------	--------------------

Signature (Note 3)	Its	Title
--------------------	-----	-------

Print or type name

- Notes: 1. Fee is \$25.00, between date of filing application and the next December 31.
2. Exact corporate name and address of corporation making the application.
3. Signature and title of person signing for the corporation. Must be signed by the chairman of
the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative
signatures.

Mail fee with DATED AND SIGNED ORIGINAL WITH ORIGINAL CERTIFICATE OF GOOD
STANDING to: Corporation Division, Department of State, 107 North Main Street, Concord NH 03301-
4989.

STATE OF NEW HAMPSHIRE

Registration fee: \$25.00
Use black print or type.

Form No. 7
RSA 293-A:4.04

APPLICATION FOR RENEWAL OF REGISTERED NAME
(A FOR PROFIT FOREIGN CORPORATION)

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION HEREBY APPLIES FOR A RENEWAL OF THE REGISTRATION OF ITS CORPORATE NAME TO AND INCLUDING DECEMBER 31, _____, AND SUBMITS THE FOLLOWING STATEMENT:

- FIRST: The name of the corporation is _____
- SECOND: It is incorporated under the laws of _____
- THIRD: The date of its incorporation is _____
- FOURTH: It is carrying on or doing business.
- FIFTH: The business in which it is engaged is _____

SIXTH: This Application is accompanied by: (a) a certificate setting forth that the corporation is in good standing under the laws of _____ wherein it is incorporated, executed by the official having custody of the records pertaining to corporations in that state or territory; and (b) a registration fee of \$25.00 as required by Section 1.22.

Dated _____,

(Corporation Name) _____

(Corporation address) _____

(No.) (Street)

(City/Town) (State) (Zip Code)

BY _____ Its _____ (Note 1)

Print or type name

Note: 1. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.

A renewal application may be filed between October 1 and December 31.

Mail fee, DATED AND SIGNED ORIGINAL with ORIGINAL CERTIFICATE OF GOOD STANDING to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT, OR BOTH, BY A CORPORATION INSTRUCTIONS FOR COMPLETING FORM 9 [RSA 293-A:5.02 (a) and RSA 293-A:15.08 (a)]

RSA 293-A:5.02 Registered Office and Registered Agent. (of a N.H. corporation)

Each corporation shall continuously maintain in this state:

- (1) A registered office that may be the same as any of its places of business.
- (2) A registered agent, who may be:
 - (i) An individual who resides in this state and whose business office is identical with the registered office;
 - (ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or
 - (iii) A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

RSA 293-A:15.08 Registered Office and Registered Agent of a foreign corporation.

Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

- (1) a registered office that may be the same as any of its places of business; and
- (2) a registered agent, who may be:
 - (i) an individual who resides in this state and whose business office is identical with the registered office;
 - (ii) a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or
 - (iii) a foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

Notes:

1. Refer to law quoted above for who may serve as agent. If a post office box is given, the physical location must also be given.
2. If a foreign corporation, the SEVENTH statement must be completed and signed by the new agent or a letter of consent signed by the new agent must be submitted with this form.
3. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.

State of New Hampshire

Filing fee: \$15.00
Use black print or type.

Form 9
RSA 293-A:5.02 (a) and 15.08 (a)

STATEMENT OF CHANGE OF REGISTERED OFFICE
OR REGISTERED AGENT, OR BOTH, BY CORPORATION

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT,
THE UNDERSIGNED CORPORATION, ORGANIZED UNDER THE LAWS OF THE STATE OF _____
SUBMITS THE FOLLOWING STATEMENT FOR THE
PURPOSE OF CHANGING ITS REGISTERED OFFICE OR ITS REGISTERED AGENT, OR BOTH,
IN THE STATE OF NEW HAMPSHIRE:

FIRST: The name of the corporation is:

SECOND: The name of its registered agent is recorded as:

THIRD: The street address, town/city of its registered office is recorded as:

FOURTH: The name of its new registered agent is (Note 1):

FIFTH: The street address, town/city of its new registered office is (Note 1):

SIXTH: The street address, town/city of its registered office and the address of the business office of its
registered agent, as changed, will be identical.

SEVENTH: (Print Name) _____
hereby consents to serve as registered agent for this corporation. (Note 2)

Signature of new agent (Note 2)

By _____
Title _____ (Note 3)

Print or type name
Date signed _____

STATE OF NEW HAMPSHIRE

Filing fee: \$15.00
Use black print or type.

Form No. 9-A
RSA 293-A:5.02 (b) and 15.08 (b)

STATEMENT OF CHANGE OF REGISTERED OFFICE
BY REGISTERED AGENT

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED SUBMITS THE FOLLOWING STATEMENT FOR THE PURPOSE OF CHANGING THE REGISTERED OFFICE OF THE CORPORATION(S) LISTED BELOW FOR WHICH HE/IT SERVES AS REGISTERED AGENT:

FIRST: Name of corporation(s):

[If more space needed, attach additional sheet(s)]

SECOND: The street address, town/city of the present registered office for each corporation listed above is:

THIRD: The street address, town/city to which the registered office is to be changed:

FOURTH: The name of the present registered agent is:

FIFTH: The street address, town/city of the registered office and the address of the business office of the registered agent, as changed, will be identical.

SIXTH: All the listed corporations have been notified in writing of the change in registered office.

Dated

By

Signature (Note 1)

Print or type name & title

Notes: 1. Must be signed manually or in facsimile by agent. If agent is a corporation, signature (manually or facsimile) of chairman of the board of directors, president or by another officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee with DATED and SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

ARTICLES OF INCORPORATION INSTRUCTIONS FOR COMPLETING FORM 11 (RSA 293-A:2.02)

NINE STEPS TO AVOID REJECTION

1. The form must be legibly printed or typed **in black ink**; pencil is not acceptable. The form must be single-sided on 8½" x 11" paper and one inch side margins must be maintained. Double-sided pages will not be accepted.
2. Article First: The name must contain a corporation designation. Per RSA 293-A:4.01 the corporate name must contain the word "corporation," "incorporated," or "limited" or the abbreviation "corp.," "inc.," or "ltd.," or words or abbreviations of like import in another language.
3. Article Second: Per RSA 293-A:6.01, all corporations must state how many shares the corporation is authorized to issue. All corporations must have at least one share. RSA 293-A:1.40 (22) defines a share as a unit to which proprietary interests in the corporation are divided (unit of ownership).
4. Article Third: A registered agent and registered office must be provided. The registered agent must reside in New Hampshire. The registered agent is the person who would receive service of process should the corporation be sued. The registered office is the registered agent's business address where the registered agent can be found for in-hand service of process. **A street/physical address must be provided in addition to the post office box.** The sheriff's department must be able to hand the service of process to the registered agent; it cannot be served to a post office box.
5. Article Fourth: The articles of incorporation must contain the following statement: *The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).*
6. Article Fifth: This article is not required to be completed. However, purposes may be helpful in determining the availability of corporate name. See RSA 293-A:2.02 (b) for additional articles which may be included.
7. Article Sixth: The name and address of all incorporators must be listed. All incorporators must sign both the articles of incorporation **and the addendum.**
8. Refer to **Instructions for Form SRA – Addendum to Business Organization and Registration Forms** for assistance in completing that form.
9. The total filing fee to incorporate is \$100.00. This is comprised of \$50.00 for the articles of incorporation plus \$50.00 for the SRA form.

PLEASE NOTE: The name will be searched for availability upon receipt of these documents. If the filing has been accepted, you will receive a filed-stamped copy within 30 days. If you do not receive an acknowledgement, please contact our office. Checks are deposited upon receipt. If the check has been cashed, it only indicates we have received the document. A cashed check is not an indication that the document has been accepted and filed.

Mail fees, DATED AND SIGNED ORIGINAL AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

Filing fee: \$50.00
Fee for Form SRA: \$50.00
Total fees \$100.00

Form 11
RSA 293-A:2.02

Use black print or type.
Form must be single-sided, on 8½" x 11" paper;
double sided copies will not be accepted.

ARTICLES OF INCORPORATION

THE UNDERSIGNED, ACTING AS INCORPORATOR(S) OF A CORPORATION UNDER THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, ADOPT(S) THE FOLLOWING ARTICLES OF INCORPORATION FOR SUCH CORPORATION:

FIRST: The name of the corporation is _____

SECOND: The number of shares the corporation is authorized to issue: _____

THIRD: The name of the corporation's initial registered agent is _____

and the **street address**, town/city (including zip code and post office box, if any) of its initial registered office is (agent's business address) _____

FOURTH: The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

FIFTH: The corporation is empowered to transact any and all lawful business for which corporations may be incorporated under RSA 293-A and the principal purpose or purposes for which the corporation is organized are:

[If more space is needed, attach additional sheet(s).]

ARTICLES OF INCORPORATION OF

Form 11
(Cont.)

SIXTH: The name and address of each incorporator is:

Name

Address

Incorporator(s)

Date signed: _____

DISCLAIMER: All documents filed with the Corporate Division become public records and will be available for public inspection in either tangible or electronic form.

Mail fees, DATED AND SIGNED ORIGINAL AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

ARTICLES OF INCORPORATION INSTRUCTIONS FOR COMPLETING FORM 11PC (RSA 293-A:2.02 and RSA 294-A)

NINE STEPS TO AVOID REJECTION

1. The form must be legibly printed or typed **in black ink**; pencil is not acceptable. The form must be single-sided on 8½" x 11" paper and one inch side margins must be maintained. Double-sided pages will not be accepted.
2. Article First: The name must contain a professional corporation designation. Per RSA 294-A:7, the name shall end in "Professional Corporation", Professional Association", "Prof. Corp.", "Prof. Ass'n.", "P.C." or "P.A." Information stating the corporation is being formed under RSA 294-A must be included in the articles of incorporation.

RSA 294-A:1 VI "Professional service" means any service which may lawfully be rendered only by certified public accountants, public accountants, architects, attorneys, podiatrists, chiropractors, dentists, pharmacists, professional engineers, land surveyors, registered professional nurses, optometrists, physicians and surgeons, physician assistants, psychologists, veterinarians, and all other professionals licensed, registered, certified, or otherwise authorized and permitted to practice independently under the provisions of RSA 309-A, 310-A, 311, 315, 316-A, 317-A, 318, 326-B, 327, 328-D, 329, 330-A, or 332-B and which may not lawfully be rendered by a corporation organized under the law of this state applicable to business corporations.

3. Article Second: Per RSA 293-A:6.01, all corporations must state how many shares the corporation is authorized to issue. All corporations must have at least one share. RSA 293-A:1.40 (22) defines a share as a unit to which proprietary interests in the corporation are divided (unit of ownership).
4. Article Third: A registered agent and registered office must be provided. The registered agent must reside in New Hampshire. The registered agent is the person who would receive service of process should the corporation be sued. The registered office is the registered agent's business address where the registered agent can be found for in-hand service of process. **A street/physical address must be provided in addition to the post office box.** The sheriff's department must be able to hand the service of process to the registered agent; it cannot be served to a post office box.
5. Article Fourth: The articles of incorporation must contain the following statement: *The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).*
6. Article Fifth: This article is not required to be completed. However, purposes may be helpful in determining the availability of corporate name. See RSA 293-A:2.02 (b) for additional articles which may be included. The name and address of all incorporators must be listed.
7. Article Sixth: The name and address of all incorporators must be listed. All incorporators must sign both the articles of incorporation **and the addendum.**
8. Refer to **Instructions for Form SRA – Addendum to Business Organization and Registration Forms** for assistance in completing that form.
9. The total filing fee to incorporate is \$100.00. This is comprised of \$50.00 for the articles of incorporation plus \$50.00 for the SRA form.

PLEASE NOTE: The name will be searched for availability upon receipt of these documents. If the filing has been accepted, you will receive a filed-stamped copy within 30 days. If you do not receive an acknowledgement, please contact our office. Checks are deposited upon receipt. If the check has been cashed, it only indicates we have received the document. A cashed check is not an indication that the document has been accepted and filed.

Mail fees, DATED AND SIGNED ORIGINAL AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

Filing fee: \$50.00
Fee for Form SRA: \$50.00
Total fees: \$100.00

Form 11PC
RSA 293-A:2.02
& RSA 294-A

Use black print or type.
Form must be single-sided, on 8 1/4" x 11" paper;
double sided copies will not be accepted.

ARTICLES OF INCORPORATION

THE UNDERSIGNED, ACTING AS INCORPORATOR(S) OF A CORPORATION UNDER THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, ADOPT(S) THE FOLLOWING ARTICLES OF INCORPORATION FOR SUCH CORPORATION:

FIRST: The name of the professional corporation is _____

SECOND: The number of shares the professional corporation is authorized to issue: _____

THIRD: The name of the professional corporation's initial registered agent is _____

and the **street address**, town/city (including zip code and post office box, if any) of its initial registered office is (agent's business address) _____

FOURTH: The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

FIFTH: The professional corporation is empowered to transact any and all lawful business for which professional corporations may be incorporated under RSA 294-A and the principal purpose or purposes for which the professional corporation is organized are:

[If more space is needed, attach additional sheet(s).]

Form 11PC
(Cont.)

State of New Hampshire

Filing fee: \$35.00

Use black print or type.

Form must be single-sided, on 8 1/2 x 11" paper;
double sided copies will not be accepted.

Form No.14
RSA 293-A:10.06

ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT,
THE UNDERSIGNED CORPORATION ADOPTS THE FOLLOWING ARTICLES OF AMENDMENT
TO ITS ARTICLES OF INCORPORATION:

FIRST: The name of the corporation is _____

SECOND: The text of each amendment adopted is:

THIRD: If the amendment provides for an exchange, reclassification or cancellation of issued shares, the
provisions for implementing the amendment(s) if not contained in the above amendment are:

FOURTH: The amendment(s) were adopted on (date) _____

[If more space is needed, attach additional sheet(s)]

ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION OF

Form No. 14
(Cont.)

FIFTH: (Check one)

A ☐ The amendment(s) were adopted by the incorporators or board of directors without shareholder action and shareholder action was not required.

B ☐ The amendment(s) were approved by the shareholders: (Note 1)

Designation of voting group			
Class or Series of shares	Number of shares outstanding	Number of votes entitled to be cast	Number of votes indisputably represented at the meeting

Designation of voting group	Total number of votes to be cast:		OR
Class or Series of shares	FOR	AGAINST	Total number of undisputed votes cast FOR

[If more space is needed, attach additional sheet(s)]

ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION OF

Form No. 14
(Cont.)

SIXTH: If shareholder action was required, the number cast for the amendment(s) by each voting group was sufficient for approval by each voting group.

Date _____

(Corporate name) (Note 2)

(Signature) (Note 3)

(Title) (Note 3)

(Print or type name)

DISCLAIMER: All documents filed with the Corporation Division will be publicly available for inspection, physically, electronically or in other media.

- Notes:**
- 1. All sections under the Fifth article, "B" option, must be completed. If any voting group is entitled to vote separately, give respective information for each voting group. (See RSA 293-A:1.40 for definition of voting group.)
 - 2. Exact corporate name of corporation adopting articles of amendment.
 - 3. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or other officer; or see RSA 293-A:1.20 (f) for alternative signatures.

Mail fee and **DATED AND SIGNED ORIGINAL** to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

Filing fee: \$15.00
Use black print or type.
Form must be single-sided, on 8 1/2 X 11" paper;
double-sided copies will not be accepted.

Form 16
RSA 293-A:10.07

RESTATED ARTICLES OF INCORPORATION
OF

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION, PURSUANT TO A RESOLUTION DULY ADOPTED BY ITS BOARD OF DIRECTORS, HEREBY ADOPTS THE FOLLOWING RESTATED ARTICLES OF INCORPORATION: (Here insert all of the operative provisions of the articles of incorporation as amended)

RESTATED ARTICLES OF INCORPORATION OF

Form 16
(cont.)

THE FOREGOING RESTATED ARTICLES OF INCORPORATION CORRECTLY SET FORTH WITHOUT CHANGE THE CORRESPONDING PROVISIONS OF THE ARTICLES OF INCORPORATION AS HERETOFORE AMENDED, AND SUPERSEDE THE ORIGINAL ARTICLES OF INCORPORATION AND ALL AMENDMENTS THERETO.

Date

(Corporate name)

(Note 1)

(Signature)

(Note 2)

(Title)

(Note 2)

(Print or type name)

DISCLAIMER: All documents filed with the Corporation Division will be publicly available for inspection, physically, electronically or in other media.

- Notes:
1. Exact corporate name of corporation adopting the restated articles of incorporation.

2. Signature and title of person signing for the corporation. Must be signed by the chairman of he board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00

Use black print or type.

Leave 1" margins both sides.

Form must be single-sided, on 8 1/2 X 11" paper, and have a one inch margin on both sides. Double sided copies will not be accepted.

Form No. 16-A
RSA 293-A:10.07

**RESTATED
ARTICLES OF INCORPORATION
INCLUDING DESIGNATED AMENDMENT(S)**

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION, PURSUANT TO A RESOLUTION DULY ADOPTED BY ITS BOARD OF DIRECTORS, HEREBY ADOPTS THE FOLLOWING RESTATED ARTICLES OF INCORPORATION, INCLUDING DESIGNATED AMENDMENT(S):

Name of corporation as presently recorded: _____

(Here insert the Restated Articles of Incorporation,
as amended including the Designated Amendments.)

[Attach additional sheet(s) for more space.
Insert corporate name at top of each page.]

RESTATED ARTICLES OF INCORPORATION
INCLUDING DESIGNATED AMENDMENT(S)
OF _____

Form No. 16-A
(Cont.)

If the amendment(s) provides for an exchange, reclassification, or cancellation of issued shares, provision for implementing the amendment if not contained in the amendment(s);

Except for the Designated Amendment(s) to Article(s) (Note 1) _____

the Restated Articles of Incorporation correctly set forth without change the corresponding provisions of the Articles of Incorporation as previously amended, and the Restated Articles of Incorporation together with the Amendment(s) designated herein supersede the original Articles of Incorporation and all amendments to the Articles.

FIRST: (Check one)
_____ The restated articles contain amendment(s) adopted by the board of directors and did not require shareholder approval.
_____ The restated articles contain amendment(s) which required shareholder approval.

SECOND: The amendment(s) were adopted on (date) _____

THIRD: The amendment(s) were approved by the shareholders. (Note 2)

Designation (class or series) of voting group	Number of shares outstanding	Number of votes entitled to be cast	Number of votes indisputably represented at the meeting
---	---------------------------------	---	--

Designation (class or series) of voting group	Total number of votes cast:		OR	Total number of undisputed votes cast FOR
	FOR	AGAINST		

RESTATED ARTICLES OF INCORPORATION
INCLUDING DESIGNATED AMENDMENT(S)
OF _____

Form No. 16-A
(Cont.)

FOURTH: The number cast for the amendment(s) by each voting group was sufficient for approval.

Dated _____, _____

(Note 3)

By _____ (Note 4)

Signature of its _____

Print or type name

- Notes:
1. Here insert Restated Article NUMBER(S) which are being amended at this time.
 2. All sections under "THIRD" must be completed. If any voting group is entitled to vote separately, give respective information for each voting group. (See RSA 293-A:1.40 for definition of voting group.)
 3. Exact corporate name of corporation adopting the restated articles of incorporation.
 4. Signature and title of person signing for the corporation. Must be signed by the chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee and DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. 21
RSA 293-A:11.05

ARTICLES OF MERGER OF DOMESTIC CORPORATIONS

(surviving corporation)

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATIONS ADOPT THE FOLLOWING ARTICLES OF MERGER FOR THE PURPOSE OF MERGING THEM INTO ONE OF SUCH CORPORATIONS:

FIRST: The plan of merger was approved by each of the undersigned corporations in the manner prescribed by the New Hampshire Business Corporation Act. **THE PLAN OF MERGER IS ATTACHED.** (Note 1)

Name of Corporation _____

- (Check one) A. _____ Shareholder approval was not required.
 B. _____ Shareholder approval was required. (Note 2)

Designation (class or series) of voting group	No. of shares outstanding	Total no. of votes entitled to be cast	Total no. of votes cast FOR AGAINST	OR	Total no. of undisputed votes FOR
---	------------------------------	---	---	-----------	--

Name of Corporation _____

- (Check one) A. _____ Shareholder approval was not required.
 B. _____ Shareholder approval was required. (Note 2)

Designation (class or series) of voting group	No. of shares outstanding	Total no. of votes entitled to be cast	Total no. of votes cast FOR AGAINST	OR	Total no. of undisputed votes FOR
---	------------------------------	---	---	-----------	--

ARTICLES OF MERGER

Form No. 21

INTO _____

(Cont.)

SECOND: The number of votes cast for the plan by each voting group was sufficient for approval by each voting group.

THIRD: The aggregate number of shares, which the surviving corporation has authority to issue as a result of the merger is: _____

Dated _____, _____

(Note 3)

By _____ (Note 4)
Signature of its _____

Print or type name

(Note 3)

By _____ (Note 4)
Signature of its _____

Print or type name

- Notes:
- 1. The Plan of Merger must be submitted with this form.
 - 2. All sections under "B." must be completed. If any voting group is entitled to vote separately, give respective information for each voting group. (See RSA 293-A:1.40 for definition of voting group.)
 - 3. Exact corporate names of respective corporations executing the Articles.
 - 4. Signature and title of person signing for the corporation. Must be signed by Chairman of the Board of Directors, President or other officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee and DATED AND SIGNED ORIGINAL (INCLUDING PLAN OF MERGER) to:
Corporation Division, Department of State, 107 North Main Street, Concord
NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. 26
RSA 293-A:11.05

ARTICLES OF MERGER OF DOMESTIC AND FOREIGN CORPORATIONS

(surviving corporation)

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED DOMESTIC AND FOREIGN CORPORATIONS ADOPT THE FOLLOWING ARTICLES OF MERGER FOR THE PURPOSE OF MERGING THEM INTO ONE OF SUCH CORPORATIONS:

FIRST: The plan of merger was approved by each of the undersigned corporations in the manner prescribed by the New Hampshire Business Corporation Act. THE PLAN OF MERGER IS ATTACHED. (Note 1)

Name of Domestic Corporation _____

- (Check one) A. _____ Shareholder approval was not required.
B. _____ Shareholder approval was required. (Note 2)

Designation (class or series) of voting group	No. of shares outstanding	Total no. of votes entitled to be cast	Total no. of votes cast <u>FOR</u> <u>AGAINST</u>	<u>OR</u>	Total no. of undisputed votes <u>FOR</u>
--	------------------------------	---	---	-----------	--

SECOND: The number of votes cast for the plan by each voting group was sufficient for approval by each voting group.

Name of Foreign Corporation _____

State of Incorporation _____

THIRD: The laws of the state under which the foreign corporation was organized permit such a merger and the foreign corporation has complied with the laws of that state in effecting the merger.

ARTICLES OF MERGER

Form No. 26

(Cont.)

INTO _____

FOURTH: The aggregate number of shares, which the surviving corporation has authority to issue as a result of the merger is (Note 3) _____

Dated _____, _____

(Note 4)

By _____ (Note 5)

Signature of its _____

Print or type name

(Note 4)

By _____ (Note 5)

Signature of its _____

Print or type name

- Notes: 1. The Plan of Merger must be submitted with this form.
2. All sections under "B." must be completed. If any voting group is entitled to vote separately, give respective information for each voting group. (See RSA 293-A:1.40 for definition of voting group.)
3. Complete this section if surviving corporation is a domestic corporation.
4. Exact corporate names of respective corporations executing the Articles.
5. Signature and title of person signing for the corporation. Must be signed by Chairman of the Board of Directors, President or other officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee and DATED AND SIGNED ORIGINAL (INCLUDING PLAN OF MERGER) to:
Corporation Division, Department of State, 107 North Main Street, Concord,
NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. 32
RSA 293-A:14.01

ARTICLES OF DISSOLUTION BY INCORPORATOR(S) OR
INITIAL DIRECTORS

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED OF THE CORPORATION HEREINAFTER NAMED, ADOPT THE FOLLOWING ARTICLES OF DISSOLUTION:

FIRST: The name of the corporation is _____

SECOND: The date of incorporation was _____

THIRD: (Check one or both)

_____ None of its shares has been issued.

_____ The corporation has not commenced business.

FOURTH: No debt of the corporation remains unpaid.

FIFTH: The net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued.

SIXTH: (Check one)

_____ A majority of the incorporators authorized the dissolution.

_____ A majority of the initial directors authorized the dissolution.

Dated _____, _____

_____ (Note 1)

By _____ (Note 2)

Signature of its _____

Print or type name

Notes: 1. Exact corporate name of corporation adopting articles of dissolution.

2. Signature and title of person signing for the corporation. Must be signed by the chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. 34
RSA 293-A:14.03

ARTICLES OF DISSOLUTION
BY BOARD OF DIRECTORS AND SHAREHOLDERS

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION ADOPTS THE FOLLOWING ARTICLES OF DISSOLUTION FOR THE PURPOSE OF DISSOLVING THE CORPORATION:

FIRST: The name of the corporation is _____

SECOND: The dissolution was authorized on (date) _____

THIRD: The dissolution was approved by the shareholders. (Note 1)

Designation (class or series) of voting group	Total number of votes entitled to be cast:	Total number of votes cast:		OR	Total number of undisputed votes cast
		FOR	AGAINST		FOR

(Attach additional sheet if needed)

ARTICLES OF DISSOLUTION BY BOARD OF DIRECTORS AND SHAREHOLDERS

Form No. 34

OF _____

(Cont.)

FOURTH: The number of votes cast for dissolution was sufficient for approval.

FIFTH: The corporation certifies that a copy of the articles of dissolution was mailed to the New Hampshire Department of Revenue Administration on (date) _____

Dated _____

(Note 2)

By _____ (Note 3)
Signature of its _____

Print or type name

- Notes:
- 1. All sections under the THIRD article must be completed. If any voting group is entitled to vote separately, give respective information for each voting group. (See RSA 293-A:1.40 for definition of voting group.)
 - 2. Exact corporate name of corporation adopting articles of dissolution.
 - 3. Signature and title of person signing for the corporation. Must be signed by the chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type

Form No. 36
RSA 293-A:14.04

ARTICLES OF REVOCATION OF DISSOLUTION

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION SUBMITS THE FOLLOWING ARTICLES OF REVOCATION OF DISSOLUTION:

FIRST: The name of the corporation is _____

SECOND: Effective date of the dissolution _____

THIRD: Date the revocation of dissolution was authorized _____
(The Revocation of Dissolution must be within 120 days of Dissolution.)

FOURTH: (Check one)

- A. _____ The board of directors or incorporators revoked the dissolution.
- B. _____ The board of directors revoked the dissolution authorized by the shareholders. Such revocation was permitted by action by the board of directors alone pursuant to that authorization.
- C. _____ The revocation of the dissolution was approved by the shareholders as follows:

If any voting group is entitled to vote separately, give respective information for each voting group.

Designation of voting group	Total number of votes entitled to be cast:	Total number of votes cast:		<u>OR</u>	Total number of undisputed votes cast FOR
		<u>FOR</u>	<u>AGAINST</u>		

(Attach additional sheet if needed)

ARTICLES OF REVOCATION OF DISSOLUTION
OF _____

Form No. 36
(Cont.)

FIFTH: The number of votes cast for the revocation of dissolution was sufficient for approval.

Dated _____, _____

(Note 1)

By _____ (Note 2)
Signature of its _____

Print or type name

- Notes:
- 1. Exact corporate name of corporation adopting the articles of revocation of dissolution.
 - 2. Signature and title of person signing for the corporation. Must be signed by the chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee and DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

APPLICATION FOR CERTIFICATE OF AUTHORITY - FOR PROFIT FOREIGN CORPORATION NOTES FOR COMPLETING FORM 40 (RSA 293-A:15.03)

Article First: The **EXACT** name of the corporation as registered with the state of incorporation's secretary of state. The name must match exactly as on record **including punctuation** wherever it appears on the Form 40/SRA Addendum application. (Please reference your certificate of good standing/existence).

Article Second: To be completed **only if** the Corporation's name has been deemed unavailable by the New Hampshire Secretary of State **or** in the case where a corporate designation must be used. If the name of the corporation does not contain the word "Corporation", "Incorporated" or "Limited" or an abbreviation thereof, list the name of the corporation with the word or abbreviation which it elects to add thereto for use in New Hampshire in this article only.

Article Third: The state of incorporation or country (if outside the U.S.) must be listed.

Article Fourth: The exact date of Incorporation with the corporation's state of domicile's Secretary of State. This must be a month/day/year date. The period of duration is to be listed. If there is none then it must be listed as "perpetual" or "ongoing".

Article Fifth: The complete address of its principal office. This must be a street address, city, state and zip code; post office box, if any, may be included. All mail will be directed to this address unless otherwise specified.

Article Sixth: The name of its registered agent in New Hampshire and the complete address including zip code and post office box, if any, of its registered office in New Hampshire. The registered agent can be either an individual, who is a resident of New Hampshire or a corporation that is registered to do business in New Hampshire and is in good standing. The registered agent is responsible for receiving any legal document on behalf of the corporation. **Your application will not be processed without an agent named or if an out of state address is listed.** Please refer to RSA 293 A:15.07, Registered Office and Registered Agent of Foreign Corporations for further explanation.

Article Seventh: The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B). **Form SRA must be completed and submitted with the Form 40;** refer to the Instructions for Form SRA – Addendum to Business Organization and Registration Forms for completion.

Article Eighth: We ask for a short description of services. This is not required by statute but may be helpful in determining the availability of the corporation's name.

Article Ninth: Please list the names and addresses of **all** of the current officers and directors; use an additional sheet if necessary. If the laws in your state of incorporation do not require directors, please indicate in the space provided for the directors "none required by law".

Application Signatures: The forms must be signed by the chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures. The signature **MUST** be an **original signature**. A stamped, photocopied or computer generated signature **will not be accepted**.

An ORIGINAL certificate of legal existence or good standing from the secretary of state or other official having custody of corporate records in the corporation's state of domicile must accompany this application. (Photocopies or fax copies will not be accepted.) The certificate must be duly authenticated within 60 days of the filing of this application by the proper officer of the state or country under the laws of which the corporation is organized. (A certificate of good standing regarding taxes from a state department of revenue administration **is not** acceptable.)

Please call the Corporation Division (603-271-3244) with any questions you may have regarding this application.

Mail fees, **DATED & SIGNED ORIGINAL, ORIGINAL CERTIFICATE OF LEGAL EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION AND FORM SRA (See Notes 6 & 7)**
to: Corporate Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

Filing fee: \$50.00
Fee for Form SRA: \$50.00
Total fees \$100.00

Form 40
RSA 293-A:15.03

Use black print or type.
Form must be single-sided on 8 1/2" x 11" paper;
double sided copies will not be accepted.

APPLICATION FOR CERTIFICATE OF AUTHORITY
FOR PROFIT FOREIGN CORPORATION

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT,
THE UNDERSIGNED CORPORATION HEREBY APPLIES FOR A CERTIFICATE OF AUTHORITY
TO TRANSACT BUSINESS IN NEW HAMPSHIRE AND FOR THAT PURPOSE SUBMITS THE
FOLLOWING STATEMENT:

FIRST: The name of the corporation is _____
_____.

SECOND: The name which it elects to use in New Hampshire is _____
_____.

THIRD: It is incorporated under the laws of _____.

FOURTH: The date of its incorporation is _____ and
the period of its duration is _____.

FIFTH: The complete address (including zip code and post office box, if any) of its principal office is _____
_____.

SIXTH: The name of its registered agent IN NEW HAMPSHIRE is _____
_____ and the complete address (including zip code
and post office box, if any) of its registered office IN NEW HAMPSHIRE is (agent's business address)

_____.

SEVENTH: The sale or offer for sale of any ownership interests in this business will comply with the
requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

EIGHTH: The principal purpose or purposes which it proposes to pursue in the transaction of business in
New Hampshire are _____

_____.

APPLICATION FOR CERTIFICATE OF AUTHORITY OF

Form 40
(Cont.)

NINTH: The names and usual business addresses of its current officers and directors are: (If there are additional officers or directors, attach additional sheet OR if the laws of the state of incorporation do not require directors, indicate below.)

<u>Name</u>	<u>Title</u>	<u>Address</u>
<u>OFFICERS</u>		
<u>DIRECTORS</u>		

By _____

Signature of its _____

Print or type name

Date signed: _____

DISCLAIMER: All documents filed with the Corporate Division become public records and will be available for public inspection in either tangible or electronic form.

Mail fees, DATED & SIGNED ORIGINAL, ORIGINAL CERTIFICATE OF LEGAL EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION AND FORM SRA (See Notes 6 & 7) to: Corporate Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE
APPLICATION FOR AMENDED CERTIFICATE OF AUTHORITY
FOR PROFIT FOREIGN CORPORATION
NOTES FOR COMPLETING Form No. 42 (RSA 293-A:15.04)

Notes:

1. If the name of the corporation does not contain the word "Corporation" "Incorporated" or "Limited" or an abbreviation "Corp.", "Inc." or "Ltd.", insert the name of the corporation with the word or abbreviation which it elects to add thereto for use in New Hampshire.

OR

If a professional corporation, RSA 294-A:7 requires the name shall end in "Professional Corporation", "Professional Association", "Prof. Corp.", "Prof. Ass'n.", "P.C." or "P.A."

OR

If the corporate name is not available for use in New Hampshire, enter the name to be used in New Hampshire. In this case a trade name application must be filed with an additional \$50.00 fee and a copy of a board of directors' resolution to use the trade name in New Hampshire. The board of directors' resolution must be signed by the SECRETARY of the corporation. (A corporate designation cannot be used on the trade name.)

2. Exact corporate name of corporation making the application.
3. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.
4. An **ORIGINAL** certificate of legal existence or good standing must accompany this application. (Photocopies or fax copies will not be accepted.) The certificate must be duly authenticated within 60 days of the filing of this application by the proper officer of the state or country under the laws of which the corporation was organized or from the new state of incorporation if the state or country of incorporation has been changed. (A certificate of good standing regarding taxes from a state department of revenue administration is not acceptable.)

Mail fee and DATED AND SIGNED ORIGINAL WITH A CERTIFICATE OF EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION (Note 4) to:
Corporation Division, Department of State, 107 North Main Street, Concord,
NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. 42
RSA 293-A:15.04

**APPLICATION FOR AMENDED CERTIFICATE OF AUTHORITY
FOR PROFIT FOREIGN CORPORATION**

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION HEREBY APPLIES FOR AN AMENDED CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN NEW HAMPSHIRE AND FOR THAT PURPOSE SUBMITS THE FOLLOWING STATEMENT:

FIRST: The name of the corporation is: _____

SECOND: The name the corporation is currently using in the state of New Hampshire is: _____

THIRD: The state or country of incorporation is: _____

FOURTH: The date the corporation was authorized to transact business in the state of New Hampshire is: _____

FIFTH: This application is filed for the following reason (complete all applicable items)

a. The corporation has changed its corporate name to: _____

b. The name the corporation will hereafter use in the state of New Hampshire is changed to: _____ (Note 1)

c. The corporation has changed its period of duration to: _____

d. The corporation has changed the state or country of its incorporation to: _____

Dated _____, _____

(Note 2)

By _____ (Note 3)

Signature of its _____

Print or type name

Phone Number

Email Address

Mail fee and DATED AND SIGNED ORIGINAL WITH A CERTIFICATE OF LEGAL EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION (Note 4) to:
Corporation Division, Department of State, 107 North Main Street, Concord,
NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. 44
RSA 293-A:15.20

APPLICATION FOR CERTIFICATE OF WITHDRAWAL
OF A FOR-PROFIT FOREIGN CORPORATION

- TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE
- PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION HEREBY APPLIES FOR A CERTIFICATE OF WITHDRAWAL FROM NEW HAMPSHIRE, AND FOR THAT PURPOSE SUBMITS THE FOLLOWING STATEMENT:
- FIRST: The name of the corporation is _____
- SECOND: It is incorporated under the laws of _____.
- THIRD: It is not transacting business in New Hampshire.
- FOURTH: It hereby surrenders its authority to transact business in New Hampshire.
- FIFTH: It revokes the authority of its registered agent in New Hampshire to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.
- SIXTH: The mailing address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him is _____
- SEVENTH: The corporation will notify the Secretary of State in the future of any change in its mailing address.
- EIGHTH: Corporation is in good standing as evidenced by the filing of all annual report(s) due.

APPLICATION FOR CERTIFICATE OF WITHDRAWAL OF

Form No. 44
(cont.)

NINTH: A statement is attached from the New Hampshire Department of Revenue Administration that all taxes due from or accrued by the corporation through the date of the application for withdrawal have been either assessed and paid, or adequately provided for in a manner acceptable to the New Hampshire Department of Revenue Administration. **Yes** ☐

Dated _____, _____

(Note 1)

By _____
(Note 2)

Signature of its _____

Print or type name

(Note 3)

Telephone number

- Notes:
- 1. Exact corporate name of corporation making statement.
 - 2. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.
 - 3. Telephone number of business.

SECRETARY OF STATE'S WITHDRAWAL FILING REQUIREMENTS:

- 1. Obtain original tax certificate from the N.H. Dept. of Revenue Administration.

To obtain this tax certificate, Certificate Request Form AU-22 must be completed and submitted to the N.H. Dept. of Revenue Administration. Follow this link to obtain the required form:
<http://webster.state.nh.us/revenue/business/certificates.htm>
- 2. Mail completed Form 44 with original tax certificate from the Dept. of Revenue Administration and \$35.00 filing fee to:

Corporation Division
Department of State
107 North Main Street
Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. 48
RSA 293-A:11.05

ARTICLES OF EXCHANGE BETWEEN
DOMESTIC CORPORATIONS

ACQUIRING Corporation _____

ACQUIRED Corporation _____

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATIONS ADOPT THE FOLLOWING ARTICLES OF EXCHANGE:

FIRST: The plan of exchange was approved by the undersigned corporations in the manner prescribed by the New Hampshire Business Corporation Act. THE PLAN OF EXCHANGE IS ATTACHED.

Name of Corporation _____

- (Check one) A. _____ Shareholder approval was not required.
 B. _____ Shareholder approval was required. (Note 1)

Designation (class or series) of voting group	No. of shares outstanding	Total no. of votes entitled to be cast	Total no. of votes cast FOR AGAINST	<u>OR</u>	Total no. of undisputed votes FOR
--	------------------------------	---	---	-----------	--

Name of Corporation _____

- (Check one) A. _____ Shareholder approval was not required.
 B. _____ Shareholder approval was required. (Note 1)

Designation (class or series) of voting group	No. of shares outstanding	Total no. of votes entitled to be cast	Total no. of votes cast FOR AGAINST	<u>OR</u>	Total no. of undisputed votes FOR
--	------------------------------	---	---	-----------	--

ARTICLES OF EXCHANGE

Form No. 48
(Cont.)

SECOND: The number of votes cast for the plan by each voting group was sufficient for approval by each voting group.

Dated _____, _____

Exact name of ACQUIRING Corporation

By _____ (Note 2)

Signature of its _____

Print or type name

Exact name of ACQUIRED Corporation

By _____ (Note 2)

Signature of its _____

Print or type name

- Notes:
- 1. All sections under "B" must be completed. If any voting group is entitled to vote separately, give respective information for each voting group. (See RSA 293-A:1.40 for definition of voting group.)
 - 2. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or other officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee and DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$ 35.00
Use black print or type.

Form No. 50
RSA 293-A:11.05

ARTICLES OF EXCHANGE BETWEEN
DOMESTIC AND FOREIGN CORPORATIONS

ACQUIRING Corporation _____

ACQUIRED Corporation _____

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED DOMESTIC AND FOREIGN CORPORATIONS ADOPT THE FOLLOWING ARTICLES OF EXCHANGE:

FIRST: The plan of exchange was approved by the undersigned corporations in the manner prescribed by the New Hampshire Business Corporation Act. THE PLAN OF EXCHANGE IS ATTACHED.

Name of Domestic Corporation _____

- (Check one) A. _____ shareholder approval was not required.
 B. _____ Shareholder approval was required. (Note 1)

Designation (class or series) of voting group	No. of shares outstanding	Total no. of votes entitled to be cast	Total no. of votes cast FOR AGAINST	<u>OR</u>	Total no. of undisputed votes FOR
--	------------------------------	---	---	-----------	--

SECOND: The number of votes cast for the plan by each voting group was sufficient for approval by each voting group.

Name of Foreign Corporation _____

State of Incorporation _____

THIRD: The laws of the state under which the foreign corporation was organized permit such an exchange and the foreign corporation has complied with the laws of that state in effecting the exchange.

ARTICLES OF EXCHANGE

Form No. 50
(Cont.)

Dated _____, _____

Exact name of ACQUIRING Corporation

By _____ (Note 2)

Signature of its _____

Print or type name

Exact name of ACQUIRED Corporation

By _____ (Note 2)

Signature of its _____

Print or type name

- Notes:
- 1. All sections under "B." must be completed. If any voting group is entitled to vote separately, give respective information for each voting group. (See RSA 293-A:1.40 for definition of voting group.)
 - 2. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or other officer; or see RSA 293-A:1.20(f) for alternative signatures.

Mail fee and DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type

Form No. 52
RSA 293-A:1.24

ARTICLES OF CORRECTION

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION SUBMITS THE FOLLOWING ARTICLES OF CORRECTION FOR THE PURPOSE OF CORRECTING A DOCUMENT FILED BY THE SECRETARY OF STATE:

FIRST: The name of the corporation is _____

SECOND: On (date) _____ the corporation filed the following document: (check one)
A. _____ (Describe document): _____
B. _____ The attached document.

THIRD: This document was incorrect in the following manner (specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective):

FOURTH: The incorrect matters stated in the above third article should be revised as follows:

Dated _____, _____
Name of corporation _____
Signature* _____
Print name and title _____

* Must be signed by chairman of the board of directors, president or other officer; or see RSA 293-A:1.20(f) for alternative signatures.
For effective date of these Articles of Correction see RSA 293-A:1.24(2)(c).

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Recording fee: \$25.00

Form NP-1

Use black print or type.

RSA 292:2

Form must be single-sided, on 8½" x 11" paper and have one inch margins on both sides. Double sided copies will not be accepted.

ARTICLES OF AGREEMENT
OF
A NEW HAMPSHIRE NONPROFIT CORPORATION

THE UNDERSIGNED, BEING PERSONS OF LAWFUL AGE, ASSOCIATE UNDER THE PROVISIONS OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, CHAPTER 292 BY THE FOLLOWING ARTICLES:

FIRST: The name of the corporation shall be:

SECOND: The object for which this corporation is established is:

THIRD: The provisions for establishing membership and participation in the corporation are:

FOURTH: The provisions for disposition of the corporate assets in the event of dissolution of the corporation including the prioritization of rights of shareholders and members to corporate assets are:

ARTICLES OF AGREEMENT OF

Form NP-1
RSA 292:2

FIFTH: The address at which the business of this corporation is to be carried on is:

SIXTH: The amount of capital stock, if any, or the number of shares or membership certificates, if any, and provisions for retirement, reacquisition and redemption of those shares or certificates are:

SEVENTH: Provision eliminating or limiting the personal liability of a director, an officer or both, to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, an officer or both is: (Note 1)

ARTICLES OF AGREEMENT OF

Form NP-1
RSA 292:2

EIGHTH: Signatures and post office address of each of the persons associating together to form the corporation: (Note 2)

	<u>Signature and Name</u>	<u>Post Office Address</u>
1.	Signature Name (please print)	Street City/TownStateZip
2.	Signature Name (please print)	Street City/TownStateZip
3.	Signature Name (please print)	Street City/TownStateZip
4.	Signature Name (please print)	Street City/TownStateZip
5.	Signature Name (please print)	Street City/TownStateZip

Notes: 1. If no provision eliminating or limiting personal liability, insert "NONE".
2. At least five signatures are required.

Mail fee and DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE

Recording fee: \$25.00 (Note 1)
Use black print or type.
Leave 1" margins both sides.
Form must be single-sided, on 8 1/2 x 11" paper, and have a one inch
margin on both sides. Double sided copies will not be accepted.

Form No. NP 3
RSA 292:5 & 7

AFFIDAVIT OF AMENDMENT
OF

A NEW HAMPSHIRE NONPROFIT CORPORATION

I, _____, the undersigned, being the
_____ (Note 2) of the above named New Hampshire nonprofit
corporation, do hereby certify that a meeting was held on _____,
in _____ (Note 3), for the purpose of amending the articles
of agreement and the following amendment(s) were approved by a majority vote
of the corporation's _____. (Note 4)

[If more space is needed, attach additional sheet(s).]

A true record, attest: _____
(Signature)

Dated _____, _____

- Notes:
- 1. Make check payable to N.H. Secretary of State.
 - 2. Clerk, secretary or other officer.
 - 3. Town/city and state.
 - 4. Enter either "Board of Directors" or "Trustees".

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division, Department
of State, 107 North Main Street, Concord NH 03301-4989.

File a copy with Clerk of the town/city of the principal place of business.

STATE OF NEW HAMPSHIRE

Use black print or type.
(No filing fee.)

Form No. NP 5
RSA 292:10-a

STATEMENT OF DISSOLUTION
OF

A NEW HAMPSHIRE NONPROFIT CORPORATION

We, the undersigned, being the Treasurer and a majority of the Directors (or Trustees) of the above New Hampshire nonprofit corporation, with its principal place of business in _____, New Hampshire, do hereby certify that:

1. At a meeting of members or stockholders of said corporation held on _____, _____, in _____, New Hampshire, a _____ vote (Note 1) of all the members or stockholders was adopted, of which the following is a true copy:

2. The plan for distribution of the corporation's assets and satisfaction of its obligations is as follows:

Signed under the penalties of perjury.

Treasurer

Directors or Trustees

Signatures

Print names

Signature

Print name

Note 1: A CHURCH must have a UNANIMOUS vote and must state that all members eligible to vote voted dissolution. All OTHER NONPROFIT CORPORATIONS must have a TWO-THIRDS vote. (See RSA 292:10-a I and II)

Mail in DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$25.00
Use black print or type.

Form No. FNP 1
RSA 292:5-b
& 293-A:15.03

APPLICATION FOR REGISTRATION OF A FOREIGN NONPROFIT CORPORATION

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF VOLUNTARY CORPORATIONS AND ASSOCIATIONS AND THE NEW HAMPSHIRE BUSINESS CORPORATIONS ACT, THE UNDERSIGNED CORPORATION HEREBY APPLIES FOR A CERTIFICATE OF REGISTRATION IN NEW HAMPSHIRE, AND FOR THAT PURPOSE SUBMITS THE FOLLOWING STATEMENT:

FIRST: The name of the corporation is _____

SECOND: It Is incorporated under the laws of _____

THIRD: The date of its incorporation is _____
and the period of its duration is _____

FOURTH: The complete address (including zip code) of its principal office _____

FIFTH: The name of its registered agent in New Hampshire is _____
_____ and the complete address (including Zip code) of its proposed registered office in New Hampshire is (agent's business address) _____

_____ (Note 1)

SIXTH: The principal purpose or purposes which it proposes to pursue in the transaction of business in New Hampshire are _____

_____ (Note 2)

APPLICATION FOR REGISTRATION OF
A FOREIGN NONPROFIT CORPORATION

Form No. FNP 1
(Cont.)

(corporate name)

SEVENTH: The names and usual business addresses of its current officers and directors are: (If there are additional officers or directors, attach additional sheet.)

<u>Name</u>	<u>Office</u>	<u>Address</u>
<u>OFFICERS</u>		
_____	_____	_____

_____	_____	_____

_____	_____	_____

_____	_____	_____

<u>DIRECTORS</u>		
_____	_____	_____

_____	_____	_____

_____	_____	_____

_____	_____	_____

_____	_____	_____

_____	_____	_____

_____	_____	_____

APPLICATION FOR REGISTRATION OF
A FOREIGN NONPROFIT CORPORATION

Form No. FNP 1
(Cont.)

(corporate name)

Dated _____, _____

(Note 3)

By _____ (Note 4)

Signature of its _____

Print or type name

Phone Number

Email Address

Notes: 1. The law requires out-of-state nonprofit corporations to have a registered agent/registered office.

"293-A:15.07 Registered Office and Registered Agent of Foreign Corporation.

Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

- (1) a registered office that may be the same as any of its places of business; and
- (2) a registered agent, who may be:
 - (i) an individual who resides in this state and whose business office is identical with the registered office;
 - (ii) a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or
 - (iii) a foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office."

- 2. This statement is not required by statute but may be helpful in determining the availability of the corporate name.
- 3. Exact corporate name of corporation making the application.
- 4. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.
- 5. An **ORIGINAL** certificate of legal existence or good standing must accompany this application. (Photocopies or fax copies will not be accepted.) The certificate must be duly authenticated within 60 days of the filing of this application by the proper officer of the state or country under the laws of which the corporation was organized.

Mail fee, DATED AND SIGNED ORIGINAL WITH A CERTIFICATE OF LEGAL EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION (Note 5) to: Corporation Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE
APPLICATION FOR AMENDED CERTIFICATE OF REGISTRATION
OF A FOREIGN NONPROFIT CORPORATION
NOTES FOR COMPLETING Form No. FNP 3
RSA 292:5-b & RSA 293-A:15.04

Notes:

1. Exact corporate name of corporation making the application.
2. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.
3. An **ORIGINAL** certificate of legal existence or good standing must accompany this application. (Photocopies or fax copies will not be accepted.) The certificate must be duly authenticated within 60 days of the filing of this application by the proper officer of the state or country under the laws of which the corporation was organized or from the new state of incorporation if the state or country of incorporation has been changed. (A certificate of good standing regarding taxes from a state department of revenue administration **is not** acceptable.)

Mail fee, DATED AND SIGNED ORIGINAL WITH A CERTIFICATE OF LEGAL EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION to: Corporation Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$25.00
Use black print or type.

Form No. FNP 3
RSA 292:5-b &
RSA 293-A:15.04

APPLICATION FOR AMENDED CERTIFICATE OF REGISTRATION
OF A FOREIGN NONPROFIT CORPORATION

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF SECTION 5-b OF VOLUNTARY CORPORATIONS AND ASSOCIATIONS AND SECTION 15.04 OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION HEREBY APPLIES FOR AN AMENDED CERTIFICATE OF REGISTRATION IN NEW HAMPSHIRE AND FOR THAT PURPOSE SUBMITS THE FOLLOWING STATEMENT:

FIRST: The name of the corporation is: _____

SECOND: The name the corporation is currently using in the state of New Hampshire is: _____

THIRD: The state or country of incorporation is: _____

FOURTH: The date the corporation was authorized to transact business in the state of New Hampshire is: _____

FIFTH: This application is filed for the following reason (complete all applicable items)

a. The corporation has changed its corporate name to: _____

b. The name the corporation will hereafter use in the state of New Hampshire is changed to: _____

c. The corporation has changed its period of duration to: _____

d. The corporation has changed the state or country of its incorporation to: _____

Dated _____, _____

(Note 1)

By _____ (Note 2)

Signature of its _____

Print or type name

Phone Number

Email Address

Mail fee, DATED AND SIGNED ORIGINAL WITH A CERTIFICATE OF LEGAL EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION to: Corporation Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$25.00
Use black print or type.

Form No. FNP 5
RSA 292:5b &
RSA 293-A:15.20

APPLICATION FOR CERTIFICATE OF WITHDRAWAL OF A
FOREIGN NONPROFIT CORPORATION

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF VOLUNTARY CORPORATIONS AND ASSOCIATIONS AND THE NEW HAMPSHIRE BUSINESS CORPORATION ACT, THE UNDERSIGNED CORPORATION HEREBY APPLIES FOR A CERTIFICATE OF WITHDRAWAL FROM NEW HAMPSHIRE, AND FOR THAT PURPOSE SUBMITS THE FOLLOWING STATEMENT:

FIRST: The name of the corporation is _____

SECOND: It is incorporated under the laws of _____

THIRD: It is not transacting business in New Hampshire.

FOURTH: It hereby surrenders its authority to transact business in New Hampshire.

FIFTH: It revokes the authority of its registered agent in New Hampshire to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.

SIXTH: The mailing address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him is

SEVENTH: The corporation will notify the Secretary of State in the future of any change in its mailing address.

APPLICATION FOR CERTIFICATE OF WITHDRAWAL
OF _____

Form No. FNP 5
(Cont.)

Dated _____, _____

(Note 1)

By _____ (Note 2)

Signature of its _____

Print or type name

Phone Number

Email Address

- Notes:
- 1. Exact corporate name of corporation making statement.
 - 2. Signatures and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.

State of New Hampshire

Filing Fee: \$50.00

Fee for Form SRA: \$50.00

Total fees: \$100.00

Use black print or type.

Form LP-1
RSA 304-B:8

CERTIFICATE OF
NEW HAMPSHIRE LIMITED PARTNERSHIP

LIMITED PARTNERSHIP NAME: _____

(must contain the words "limited partnership" without abbreviation)

OFFICE ADDRESS: _____

(where required records are to be kept)

AGENT: _____

AGENT'S ADDRESS: _____

LATEST DATE LIMITED PARTNERSHIP TO BE DISSOLVED: _____

OTHER MATTERS (Attach additional sheets as necessary):

The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

GENERAL PARTNER(S): (All general partners must sign, under penalties of perjury.)

A.	_____ TYPE OR PRINT NAME	NO. _____ STREET
	_____ Signature	TOWN/CITY _____ STATE _____ ZIP _____
B.	_____ TYPE OR PRINT NAME	NO. _____ STREET
	_____ Signature	TOWN/CITY _____ STATE _____ ZIP _____
C.	_____ TYPE OR PRINT NAME	NO. _____ STREET
	_____ Signature	TOWN/CITY _____ STATE _____ ZIP _____

Date signed: _____

DISCLAIMER: All documents filed with the Corporate Division become public records and will be available for public inspection in either tangible or electronic form.

Mail fee, DATED AND SIGNED ORIGINAL, ONE EXACT OR CONFORMED COPY AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00 (SEE TOTAL FEES AT BOTTOM OF PAGE 2)
Use black print or type.

Form No. C 3
RSA 304-A:56 &
RSA 304-B

CERTIFICATE OF CONVERSION
NEW HAMPSHIRE GENERAL PARTNERSHIP TO A
NEW HAMPSHIRE LIMITED PARTNERSHIP

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE UNIFORM PARTNERSHIP ACT, THE
UNDERSIGNED DOMESTIC GENERAL PARTNERSHIP SUBMITS THE FOLLOWING CERTIFICATE OF
CONVERSION:

FIRST: The general partnership was formed in New Hampshire on
(date) _____

(Note 1)

SECOND: The name of the general partnership immediately prior to the
filing of this certificate: _____

THIRD: The domestic general partnership has converted to a domestic
limited partnership.

FOURTH: All of the partners approved the conversion.

FIFTH: The name of the limited partnership as set forth in its
certificate of New Hampshire limited partnership: _____

(Note 2)

CERTIFICATE OF CONVERSION

Form No. C 3
(Cont.)

SIXTH: The plan of conversion is on file at the principal place of business of the limited partnership at (business address) _____

_____ and a copy of the plan of conversion will be furnished by (name of limited partnership) _____ on request and without cost, to any interest holder of (name of general partnership) _____

Dated _____

Name of general partnership: _____

By _____
Signature of its duly authorized partner

Print or type name

Note 1: If the general partnership changed its jurisdiction immediately prior to the conversion, enter state previously formed.

Note 2: If the limited partnership name is the same name as a registered trade name, written consent or a discontinuance form for the trade name signed by all registrants of the trade name, must be submitted with the Certificate of New Hampshire Limited Partnership (form LP-1) .

MAIL DATED AND SIGNED ORIGINAL with CERTIFICATE OF NEW HAMPSHIRE LIMITED PARTNERSHIP (Form LP-1), Form SRA AND TOTAL FEES of \$135.00 to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

Filing fee: \$50.00
Fee for Form SRA: \$50.00
Total fees: \$100.00

Form FLP-1
RSA 304-B:49

Use black print or type.
Form must be single-sided, on 8 1/2" x 11" paper;
double sided copies will not be accepted.

APPLICATION FOR REGISTRATION OF
FOREIGN LIMITED PARTNERSHIP

- (1) Limited Partnership name (see Note 1): _____
- (2) Name used in New Hampshire: _____
- (3) State of Formation: _____ Date of Formation: _____
- (4) Name of Agent: _____
- (5) Agent's Address: _____
- (6) The Secretary of State is appointed agent for service of process if agent has not been appointed or cannot be found or served or agent's authority has been revoked.
- (7) Address of office in state of formation (if not required by laws of state of formation, address of principal office): _____
- (8) Address at which is kept a list of the names and addresses of limited partners and their contributions. These records will be maintained until this registration is canceled or withdrawn: _____
- (9) The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

(10) GENERAL PARTNERS (list additional general partners on separate sheet):

Name(s):	Business Address(es):
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

APPLICATION FOR REGISTRATION OF
FOREIGN LIMITED PARTNERSHIP OF

SIGNED: _____
(by a general partner)

Print or type name

State of _____

County of _____ ss.

Before me personally appeared _____, who
signed the foregoing instrument in my presence, on this _____ day of _____, _____.

(Notary Public or Justice of the Peace)

Note 1: List actual limited partnership name on (1). If name does not contain “limited partnership” without abbreviation, add to name on (2). If using an assumed name, insert assumed name on (2) and file trade name application (Form TN-1, \$50.00).

DISCLAIMER: All documents filed with the Corporate Division become public records and will be available for public inspection in either tangible or electronic form.

Mail fee, DATED AND SIGNED DUPLICATE ORIGINALS AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$50.00

Form No. FP-1
RSA 305-A:2

APPLICATION FOR CERTIFICATE OF AUTHORITY
FOR A FOREIGN PARTNERSHIP

TO THE SECRETARY OF STATE
OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF CHAPTER 305-A, SECTION 2 OF THE NEW HAMPSHIRE
REVISED STATUTES ANNOTATED, THE UNDERSIGNED HEREBY APPLIES FOR A CERTIFICATE
OF AUTHORITY TO TRANSACT BUSINESS IN NEW HAMPSHIRE, AND FOR THAT PURPOSE
SUBMITS THE FOLLOWING STATEMENT: (Please print)

FIRST: The name of the partnership is:

SECOND: It is organized under the laws of _____

THIRD: The post office address of its principal office in the state or
country under the laws of which it is organized is

(no. & street) (city/town) (state or country) (zip code)

FOURTH: The address of its registered office in New Hampshire is _____

(no. & street) (city/town) (state or country) (zip code)

and the name of its registered agent in New Hampshire at that address is _____

_____.

IN WITNESS WHEREOF I _____, a
partner of the aforesaid partnership with the approval of the partnership,
have signed this application on behalf of said partnership this _____
day of _____, _____.

Signature _____

Print or type name

Phone Number

Email Address

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division,
Department of State, 107 North Main Street, Concord, NH 03301-4989.

Filing Fee: \$35.00

STATE OF NEW HAMPSHIRE

Form No. FP-3
RSA 305-A:2-a

FOREIGN PARTNERSHIP CERTIFICATE OF CHANGE

Pursuant to Chapter 305-A:2-a of the Revised Statutes Annotated of the State of New Hampshire, I,
_____, a partner of _____

a partnership organized and existing under the laws of _____ do hereby
certify: *(Check where appropriate, supplying details as requested.)*

[] A. That said partnership has undergone the following change in the composition of its partners:
Partner(s) *withdrawn* (attach additional sheet if necessary):

_____	_____
(name)	(address)
_____	_____
(name)	(address)

or Partner(s) *added* (attach additional sheet if necessary):

_____	_____
(name)	(address)
_____	_____
(name)	(address)

to the effect that the resultant composition of said partnership is as follows (attach additional sheet if necessary):

_____	_____
(name)	(address)
_____	_____
(name)	(address)
_____	_____
(name)	(address)
_____	_____
(name)	(address)
_____	_____
(name)	(address)
_____	_____
(name)	(address)

The effective date of change is _____.

Form No. FP-3

[] B. That said partnership has changed its partnership name as follows:

Name before change:

Name after change (current name):

The effective date of change is _____.

That the foregoing changes in said partnership have been duly effected in the manner prescribed by the laws of _____ wherein such partnership is organized.

Signature of Partner

Telephone Number

Email Address

Dated _____, _____

STATE OF _____

COUNTY OF _____

_____, _____
(city) (date)

_____, being duly sworn, did depose and say: That he is a partner of _____;

that he has read the foregoing certificate and knows the contents thereof and that the statements contained therein are true. Subscribed and sworn to before me,

(notary public) [seal]

My commission expires: _____

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State,
107 North Main Street, Concord NH 03301-4989.

Filing fee: \$15.00
Use black print or type.

STATE OF NEW HAMPSHIRE

Form FP-4
RSA 305-A:2-a

FOREIGN PARTNERSHIP STATEMENT OF CHANGE
OF REGISTERED AGENT OR REGISTERED OFFICE OR BOTH

Pursuant to Chapter 305-A:2-a of the Revised Statutes Annotated of the State of New Hampshire, I,
_____, a partner of _____,
_____,
a partnership organized and existing under the laws of _____ do hereby
certify that said partnership has changed its registered agent or registered office, or both, as follows:

Current Registered Agent and Registered Office (as shown on secretary of state's record):

Name	Address
------	---------

New Registered Agent and/or Registered Office:

Name	Address
------	---------

The effective date of change is _____.

That the foregoing changes in said partnership have been duly effected in the manner prescribed by the
laws of _____ wherein such partnership is organized.

Signature of Partner
Telephone Number
Email Address

Dated _____, _____

STATEMENT OF CHANGE OF REGISTERED AGENT OR OFFICE
(partnership name) _____

Form FP-4
(cont.)

STATE OF _____

COUNTY OF _____

_____,
(city)

_____,
(date)

_____, being duly sworn, did depose and say: That he is a partner of _____;
that he has read the foregoing certificate and knows the contents thereof and that the statements contained therein are true. Subscribed and sworn to before me,

(notary public)

[seal]

My commission expires: _____, _____

Filing Fee: \$35.00

STATE OF NEW HAMPSHIRE

Form No. FP-5
RSA 305-A:5

FOREIGN PARTNERSHIP STATEMENT OF WITHDRAWAL

To the Secretary of State, State of New Hampshire

_____, a partnership existing under
and by virtue of the laws of _____, for the
(state or country)
purpose of withdrawing from the State of New Hampshire, in conformity with the laws
thereof hereby represents:

(a) The name of said partnership is _____
_____ and it was organized under the laws of
_____. The post office address of its
(state or country)
principal office therein is _____
(street and number, if any)

(city or town) (state or country) (zip code)

(b) The address, including street and number, if any, of its registered
office in the State of New Hampshire is _____
(street or number, if any)
_____, New Hampshire, and the name of its
(city or town)
registered agent at such address is _____

(c) Said partnership hereby surrenders its authority to do business in the State of
New Hampshire.

(d) Said partnership hereby revokes the authority to make service of process
on its registered agent, and hereby consents that service of process in any
suit, action or proceeding based upon any cause of action arising with- in or
without the State of New Hampshire prior to the effective date of withdrawal
may thereafter be made on said partnership by service thereof on the Secretary
of State of New Hampshire.

IN WITNESS WHEREOF I, _____,
a general partner of the aforesaid partnership with the approval of the part-
nership have signed this statement of withdrawal on behalf of said partnership
this _____ day of _____.

(name of partnership)

Signature _____ (partner)

Print name _____

Phone Number _____

Email Address _____

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North
Main Street, Concord NH 03301-4989.

3/05
CD Misc. FP-5 V-1.0

STATE OF NEW HAMPSHIRE
APPLICATION FOR CERTIFICATE OF AUTHORITY OF A
FOREIGN CONSUMER CO-OPERATIVE CORPORATION
NOTES FOR COMPLETING Form No. 40 CO-OP (RSA 293-A:15.03 & RSA 301-A:37)

Notes:

- 1. If the name of the corporation does not contain the word "Corporation", "Incorporated" or "Limited" or an abbreviation "Corp.", "Inc." or "Ltd.", insert the name of the corporation with the word or abbreviation which it elects to add thereto for use in New Hampshire.

OR

If a professional corporation, RSA 294-A:7 requires the name shall end in "Professional Corporation", "Professional Association", "Prof. Corp.", "Prof. Ass'n.", "P.C." or "P.A."

OR

If the corporate name is not available for use in New Hampshire, enter the name to be used in New Hampshire. In this case a trade name application must be filed with an additional \$50.00 fee and a copy of a board of directors' resolution to use the trade name in New Hampshire. The board of directors' resolution must be signed by the SECRETARY of the corporation. (A corporate designation cannot be used on the trade name.) If the corporate name is available, and a trade name in addition to the corporate name is to be used, do not enter the trade name in this space but file a trade name application with a \$50.00 fee.

- 2. The registered office must be the agent's business address. If a post office box is given, the physical location of the business office must also be given. The registered agent shall be the agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

293-A:15.07 Registered Office and Registered Agent of Foreign Corporations.

Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

- (1) a registered office that may be the same as any of its places of business; and
- (2) a registered agent, who may be:
 - (i) an individual who resides in this state and whose business office is identical with the registered office;
 - (ii) a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or
 - (iii) a foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

- 3. This statement is not required by statute but may be helpful in determining the availability of the corporation's name.
- 4. Exact corporate name of corporation making the application.
- 5. Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or another officer; or see RSA 293-A:1.20(f) for alternative signatures.
- 6. An **ORIGINAL** certificate of legal existence or good standing must accompany this application. (Photocopies or fax copies will not be accepted.) The certificate must be duly authenticated within 60 days of the filing of this application by the proper officer of the state or country under the laws of which the corporation is organized. (A certificate of good standing regarding taxes from a state department of revenue administration is not acceptable.)

Mail total fees, DATED & SIGNED ORIGINAL, ORIGINAL CERTIFICATE OF LEGAL EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$50.00
Use black print or type.

Form No. 40 CO-OP
RSA 293-A:15.03
& RSA 301-A:37

APPLICATION FOR CERTIFICATE OF AUTHORITY OF A
FOREIGN CONSUMER CO-OPERATIVE CORPORATION

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT,
THE UNDERSIGNED CORPORATION HEREBY APPLIES FOR A CERTIFICATE OF AUTHORITY
TO TRANSACT BUSINESS IN NEW HAMPSHIRE AND FOR THAT PURPOSE SUBMITS THE
FOLLOWING STATEMENT:

FIRST: The name of the corporation is _____
_____.

SECOND: The name which it elects to use in New Hampshire is _____
_____. (Note 1)

THIRD: It is incorporated under the laws of _____.

FOURTH: The date of its incorporation is _____ and
the period of its duration is _____.

FIFTH: (Complete this statement only if a Professional Association.) All the shareholders and those of its
directors and officers as are required by the laws of (enter the State of Incorporation) _____
_____ and by RSA 294-A:20 are licensed in one or more states, territories of
the United States or the District of Columbia to render a professional service described in the statement of
purpose of the corporation.

SIXTH: The complete address (including zip code and post office box, if any) of its principal office is ____
_____.

SEVENTH: The name of its registered agent **IN NEW HAMPSHIRE** is _____
_____ and the complete address (including zip code
and post office box, if any) of its registered office **IN NEW HAMPSHIRE** is (agent's business address)

_____. (Note 2)

APPLICATION FOR CERTIFICATE OF AUTHORITY OF
(corporate name) _____

Form No. 40 CO-OP
(Cont.)

EIGHTH: The principal purpose or purposes which it proposes to pursue in the transaction of business in New Hampshire are _____

_____. (Note 3)

NINTH: The names and usual business addresses of its current officers and directors are: (If there are additional officers or directors, attach additional sheet OR if the laws of the state of incorporation do not require directors, indicate below.)

<u>Name</u>	<u>Title</u>	<u>Address</u>
<u>OFFICERS</u>		
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
<u>DIRECTORS</u>		
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated _____, _____

_____ (Note 4)

By _____ (Note 5)

Signature of its _____

Print or type name

Mail total fees, **DATED & SIGNED ORIGINAL. ORIGINAL CERTIFICATE OF LEGAL EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION** to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

CERTIFICATE OF FORMATION OF A NEW HAMPSHIRE LIMITED LIABILITY COMPANY INSTRUCTIONS FOR COMPLETING FORM LLC-1 (RSA 304-C:12)

11 STEPS TO AVOID REJECTION

1. The form must be completed in ink; pencil or erasable ink is not acceptable. A one inch margin must be maintained; the pages cannot be double-sided.
2. Article First: The name must contain one of the following designations: Limited Liability Company, L.L.C., L. L. C. or LLC (per RSA 304-C:3)
3. Article Second: The law requires that the certificate of formation include a primary nature of business, such as "sales and manufacturing of disposable products" or "software consulting and development." We cannot accept a general clause such as "sales and manufacturing", "consulting and development", or "any lawful activity." You need to include a descriptive word. Refer to RSA 304-C:7 I for nature of business permitted.
4. Article Third: A registered agent and registered office must be provided. The registered agent must reside in New Hampshire and is the person who would receive service of process should the limited liability company be sued. The registered office is the registered agent's business address where the registered agent can be found for in-hand service of process; it cannot be served to a post office box. **A street address or physical address must be provided in addition to a post office box.**
5. Article Fourth: If a specific date of dissolution is set, a full date (month, day, year) must be stated. We cannot calculate dates. If no specific date of dissolution is set, "none", "perpetual" or "ongoing" is acceptable.
6. Article Fifth: The certificate of formation must state whether or not management is vested in a manager(s). If management is vested in a manager(s), the line must be completed as "is". If the management is not vested in a manager(s) this line must be completed with "is not". **"Is" or "is not" are the only two acceptable entries.**
7. Article Sixth: The certificate of formation must contain the following statement: *The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).*
8. The title and printed name of the person signing the documents must be stated beside or below his/her signature. RSA 304-C:2 VI requires that the documents be signed by a "manager" and if there is no manager, by a "member". If Article Fifth states "is not", the title of the person signing must be member. If Article Fifth indicates "is", the title must be manager. No other title will be accepted.
9. Refer to **Instructions for Form SRA – Addendum to Business Organization and Registration Forms** for assistance in completing that form.
10. The total filing fee is \$100.00. This is comprised of \$50.00 for the certificate of formation plus \$50.00 for the addendum.
11. Any other matters the members decide to include may be added. If more space is needed, attach additional pages.

PLEASE NOTE: The name will be searched for availability upon receipt of these documents. If the filing has been accepted, you will receive a filed-stamped copy within 30 days. If you do not receive an acknowledgment, please contact our office. Checks are deposited upon receipt. If the check has been cashed, it only indicates we have received the document. A cashed check is not an indication that the document has been accepted and filed.

Mail fees, DATED AND SIGNED ORIGINAL AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

Filing fee: \$50.00

Fee for Form SRA: \$50.00

Total fees \$100.00

Use black print or type.

Form must be single-sided, on 8½" x 11" paper;

double sided copies will not be accepted.

Form LLC-1

RSA 304-C:12

CERTIFICATE OF FORMATION
NEW HAMPSHIRE LIMITED LIABILITY COMPANY

THE UNDERSIGNED, UNDER THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY LAWS
SUBMITS THE FOLLOWING CERTIFICATE OF FORMATION:

FIRST: The name of the limited liability company is _____

SECOND: The nature of the primary business or purposes are _____

THIRD: The name of the limited liability company's registered agent is _____

and the **street address**, town/city (including zip code and post office box, if any) of its registered office is
(agent's business address) _____

FOURTH: The latest date on which the limited liability company is to dissolve is _____

FIFTH: The management of the limited liability company _____ vested in a manager or managers.

SIXTH: The sale or offer for sale of any ownership interests in this business will comply with the
requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

*Signature: _____

Print or type name: _____

Title: _____

(Enter "manager" or "member")

Date signed: _____

*Must be signed by a **manager**; if no manager, must be signed by a **member**.

DISCLAIMER: All documents filed with the Corporate Division become public records and will be
available for public inspection in either tangible or electronic form.

Mail fees, DATED AND SIGNED ORIGINAL AND FORM SRA to: Corporate Division, Department
of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

CERTIFICATE OF FORMATION NEW HAMPSHIRE PROFESSIONAL LIMITED LIABILITY COMPANY INSTRUCTIONS FOR COMPLETING FORM PLLC 1 (RSA 304-C:12 & RSA 304-D)

11 STEPS TO AVOID REJECTION

1. The form must be completed in ink; pencil or erasable ink is not acceptable. A one inch margin must be maintained; the pages cannot be double-sided.
2. Article First: RSA 304-D:6 I requires the name of a professional limited liability company shall end in Professional Limited Liability Company or the abbreviation P.L.L.C.

RSA 304-D:1 VI "Professional service" means any service which may lawfully be rendered only by certified public accountants, public accountants, architects, attorneys, podiatrists, chiropractors, dentists, pharmacists, professional engineers, land surveyors, registered professional nurses, optometrists, physicians and surgeons, psychologists, veterinarians, and all other professionals licensed, registered, certified, or otherwise authorized and permitted to practice independently under the provisions of RSA 309-A, 310-A, 311, 315, 316-A, 317-A, 318, 326-B, 327, 329, 330-A, or 332-B.
3. Article Second: Refer to RSA 304-D:2 for permissible purposes of a professional limited liability company. We cannot accept a general clause such as "any lawful activity". You need to include a descriptive word.
4. Article Third: A registered agent and registered office must be provided. The registered agent must reside in New Hampshire and is the person who would receive service of process should the professional limited liability company be sued. The registered office is the registered agent's business address where the registered agent can be found for in-hand service of process. **A street address or physical address must be provided in addition to the post office box.**
5. Article Fourth: If a specific date of dissolution is set, a full date (month, day, year) must be stated. We cannot calculate dates. If no specific date of dissolution is set, "none", "perpetual" or "ongoing" is acceptable.
6. Article Fifth: The certificate of formation must state whether or not management is vested in a manager(s). If management is vested in a manager(s), the line must be completed as "is". If the management is not vested in a manager(s), this line must be completed with "is not". **"Is" or "is not" are the only two acceptable entries.**
7. Article Sixth: The certificate of formation must contain the following statement: *The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).*
8. The title and printed name of the person signing the documents must be stated beside or below his/her signature. RSA 304-C:2 VI requires that the documents be signed by a "manager" and if there is no manager, by a "member". **If Article Fifth states "is not", the title of the person signing must be member. If Article Fifth indicates "is", the title must be manager. No other title will be accepted.**
9. Refer to **Instructions for Form SRA – Addendum to Business Organization and Registration Forms** for assistance in completing that form.
10. The total filing fee is \$100.00. This is comprised of \$50.00 for the certificate of formation plus \$50.00 for the addendum.
11. Any other matters the members decide to include may be added. If more space is needed, attach additional pages.

PLEASE NOTE: The name will be searched for availability upon receipt of these documents. If the filing has been accepted, you will receive a filed-stamped copy within 30 days. If you do not receive an acknowledgement, please contact our office. Checks are deposited upon receipt. If the check has been cashed, it only indicates we have received the document. A cashed check is not an indication that the document has been accepted and filed.

Mail fees, DATED AND SIGNED ORIGINAL AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

Filing fee: \$50.00

Fee for Form SRA: \$50.00

Total fees: \$100.00

Use black print or type.

Form must be single-sided, on 8½" x 11" paper;

double sided copies will not be accepted.

Form PLLC-1
RSA 304-C:12
& RSA 304-D

CERTIFICATE OF FORMATION
NEW HAMPSHIRE PROFESSIONAL LIMITED LIABILITY COMPANY

THE UNDERSIGNED, UNDER THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY LAWS
SUBMITS THE FOLLOWING CERTIFICATE OF FORMATION:

FIRST: The name of the professional limited liability company is _____

SECOND: The nature of the primary business or purposes are _____

THIRD: The name of the professional limited liability company's registered agent is _____
and the **street address**, town/city (including zip code and post office box, if any) of its registered office is
(agent's business address) _____

FOURTH: The latest date on which the professional limited liability company is to dissolve is _____

FIFTH: The management of the professional limited liability company _____ vested in a manager or
managers.

SIXTH: The sale or offer for sale of any ownership interests in this business will comply with the
requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

*Signature: _____

Print or type name: _____

Title: _____
(Enter "manager" or "member")

Date signed: _____

*Must be signed by a **manager**; if no manager, must be signed by a **member**.

DISCLAIMER: All documents filed with the Corporate Division become public records and will be
available for public inspection in either tangible or electronic form.

Mail fees, DATED AND SIGNED ORIGINAL AND FORM SRA to: Corporate Division, Department
of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT, OR BOTH, BY A LIMITED LIABILITY COMPANY INSTRUCTIONS FOR COMPLETING FORM LLC-2 (RSA 304-C:5 and RSA 304-C:66 II)

RSA 304-C:5 Registered Office and Registered Agent. (of a N.H. LLC)

Each limited liability company shall have and maintain in New Hampshire:

- (a) A registered office that may be the same as any of its places of business; and
- (b) A registered agent, which agent may be either an individual resident of New Hampshire whose business office is identical with the limited liability company's registered office, or a domestic corporation, or a foreign corporation authorized to do business in New Hampshire having a business office identical with such registered office.

RSA 304-C:66 Name; Registered Office; Registered Agent. (of a foreign LLC)

Each foreign limited liability company shall have and maintain in New Hampshire:

- (a) A registered office that may be the same as any of its places of business in New Hampshire.
- (b) A registered agent, which agent may be either an individual resident of New Hampshire whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, or a foreign corporation authorized to do business in New Hampshire having a business office identical with such registered office.

Notes:

1. Refer to law quoted above for who may serve as agent. If a post office box is given, the physical location must also be given.
2. If a foreign limited liability company, the SEVENTH statement must be completed and signed by the new agent or a letter of consent signed by the new agent must be submitted with this form.
3. Signature and title of person signing for the limited liability company. **MUST BE SIGNED BY A MANAGER OR IF NO MANAGER, BY A MEMBER;** or see RSA 304-C:2 for an alternative signature.

Mail fee with DATED AND SIGNED ORIGINAL to: Corporate Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

Filing fee: \$15.00
Use black print or type.

Form LLC-2
RSA 304-C:5 and 66 II

LIMITED LIABILITY COMPANY
STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT, OR BOTH.

PURSUANT TO THE PROVISIONS OF SECTION 5 OR 66 II OF CHAPTER 304-C OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, THE UNDERSIGNED LIMITED LIABILITY COMPANY, FORMED UNDER THE LAWS OF THE STATE OF _____ SUBMITS THE FOLLOWING STATEMENT FOR THE PURPOSE OF CHANGING ITS REGISTERED OFFICE OR ITS REGISTERED AGENT, OR BOTH, IN THE STATE OF NEW HAMPSHIRE:

FIRST: The name of the limited liability company is:

SECOND: The name of its registered agent is recorded as:

THIRD: The street address, town/city of its registered office is recorded as:

FOURTH: The name of its new registered agent is (Note 1):

FIFTH: The street address, town/city of its new registered office is (Note 1):

SIXTH: The street address, town/city of its registered office and the address of the business office of its registered agent, as changed, will be identical.

SEVENTH: (Print Name) _____ hereby consents to serve as registered agent for this limited liability company. (Note 2)

Signature of new agent (Note 2)

By _____
Title: _____ (Note 3)

Print or type name
Date signed: _____

DISCLAIMER: All documents filed with the Corporate Division become public records and will be available for public inspection in either tangible or electronic form.

Mail fee with DATED AND SIGNED ORIGINAL to: Corporate Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$15.00
Use black print or type.

Form No. LLC 2-A
RSA 304-C:5 IV and 66 IV

LIMITED LIABILITY COMPANY
STATEMENT OF CHANGE OF REGISTERED OFFICE
BY REGISTERED AGENT

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF SECTION 5 IV OR 66 IV OF CHAPTER 304-C OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, THE UNDERSIGNED SUBMITS THE FOLLOWING STATEMENT FOR THE PURPOSE OF CHANGING THE REGISTERED OFFICE OF THE LIMITED LIABILITY COMPANY/COMPANIES LISTED BELOW FOR WHICH HE/IT SERVES AS REGISTERED AGENT:

FIRST: Name of limited liability company/companies:

[If more space needed, attach additional sheet(s)]

SECOND: The street address, town/city of the present registered office for each limited liability company listed above is: _____

THIRD: The street address, town/city to which the registered office is to be changed: _____

FOURTH: The name of the present registered agent is: _____

FIFTH: The street address, town/city of the registered office and the address of the business office of the registered agent, as changed, will be identical.

SIXTH: A copy of this statement has been mailed to each limited liability company listed above.

Dated _____

By _____

Signature (Note 1)

Print or type name & title

Note: 1. Must be signed by agent.

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

Filing fee: \$35.00
Use black print or type.
Form must be single-sided, on 8 1/2" x 11 paper;
double sided copies will not be accepted.

Form LLC 3
RSA 304-C:13

LIMITED LIABILITY COMPANY
CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF FORMATION

PURSUANT TO THE PROVISIONS OF CHAPTER 304-C, SECTION 13 OF THE NEW HAMPSHIRE
REVISED STATUTES ANNOTATED, THE UNDERSIGNED SUBMITS THE FOLLOWING
CERTIFICATE OF AMENDMENT:

FIRST: The name of the limited liability company is _____

SECOND: The text of each amendment is : _____

[If more space is needed, attach additional sheet(s).]

Date _____ , _____

Signature:* _____

Print or Type Name _____

Title: _____

DISCLAIMER: All documents filed with the Corporation Division will be publicly available for inspection, physically, electronically or in other media.

* Signature and title of person signing for the limited liability company. **MUST BE SIGNED BY A
MANAGER OF THE LIMITED LIABILITY COMPANY. IF NO MANAGER, IT MUST BE
SIGNED BY A MEMBER.** (If the limited liability company is in the hands of a receiver, executor, or
other court appointed fiduciary, trustee, or other fiduciary, it must be signed by that fiduciary.)

Mail fee and **DATED AND SIGNED ORIGINAL** to: Corporation Division, Department of State, 107
North Main Street, Concord, NH 03301-4989

State of New Hampshire

Filing fee: \$35.00
Use **black print** or type.
Form must be single-sided, on 8 1/2"x11 paper;
double sided copies will not be accepted.

Form LLC 3
RSA 304-C:13

LIMITED LIABILITY COMPANY
CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF FORMATION

PURSUANT TO THE PROVISIONS OF CHAPTER 304-C, SECTION 13 OF THE NEW HAMPSHIRE
REVISED STATUTES ANNOTATED, THE UNDERSIGNED SUBMITS THE FOLLOWING
CERTIFICATE OF AMENDMENT:

FIRST: The name of the limited liability company is

SECOND: The text of each amendment is :

[If more space is needed, attach additional sheet(s).]

Date _____ , _____

Signature:* _____

Print or Type Name _____

Title: _____

DISCLAIMER: All documents filed with the Corporation Division will be publicly available for inspection, physically, electronically or in other media.

* Signature and title of person signing for the limited liability company. **MUST BE SIGNED BY A
MANAGER OF THE LIMITED LIABILITY COMPANY. IF NO MANAGER, IT MUST BE
SIGNED BY A MEMBER.** (If the limited liability company is in the hands of a receiver, executor, or
other court appointed fiduciary, trustee, or other fiduciary, it must be signed by that fiduciary.)

Mail fee and **DATED AND SIGNED ORIGINAL** to: Corporation Division, Department of State, 107
North Main Street, Concord, NH 03301-4989

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. LLC 4
RSA 304-C:17

LIMITED LIABILITY COMPANY
RESTATED CERTIFICATE OF FORMATION
OF

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF CHAPTER 304-C , SECTION 17 OF THE NEW HAMPSHIRE
REVISED STATUTES ANNOTATED, THE UNDERSIGNED SUBMITS THE FOLLOWING RESTATED
CERTIFICATE OF FORMATION:

(Here insert all of the operating provisions of
the Certificate of Formation as amended.)

RESTATED CERTIFICATE OF FORMATION
OF _____

Form No. LLC 4
(Cont.)

[if more space is needed, attach additional sheet(s)]

THE FOREGOING RESTATED CERTIFICATE OF FORMATION CORRECTLY SETS FORTH WITHOUT CHANGE THE CORRESPONDING PROVISIONS OF THE CERTIFICATE OF FORMATION AS HERETOFORE AMENDED, AND SUPERSEDES THE ORIGINAL CERTIFICATE OF FORMATION AND ALL AMENDMENTS THERETO.

Dated _____,

Signature: * _____
Print or Type Name: _____
Title: _____

* Signature and title of person signing for the limited liability company. MUST BE SIGNED BY A MANAGER OF THE LIMITED LIABILITY COMPANY. IF NO MANAGER, IT MUST BE SIGNED BY A MEMBER. (If the limited liability company is in the hands of a receiver, executor, or other court appointed fiduciary, trustee, or other fiduciary, it must be signed by that fiduciary.)

Mail fee and DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. LLC 4-A
RSA 304-C:17

LIMITED LIABILITY COMPANY
RESTATED CERTIFICATE OF FORMATION
INCLUDING DESIGNATED AMENDMENTS

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE
PURSUANT TO THE PROVISIONS OF CHAPTER 304-C, SECTION 17 OF THE NEW HAMPSHIRE
REVISED STATUTES ANNOTATED, THE UNDERSIGNED SUBMITS THE FOLLOWING RESTATED
CERTIFICATE OF FORMATION WITH DESIGNATED AMENDMENT(S):

Name of limited liability company as presently recorded:

(Here insert the Restated Certificate of Formation
as amended including designated amendments.)

RESTATED CERTIFICATE OF FORMATION
OF _____

Form No. LLC 4-A
(Cont.)

[if more space is needed, attach additional sheet(s)]

Except for the Designated Amendment(s) to Statement(s) (Note 1) _____

the Restated Certificate of Formation correctly sets forth without change the corresponding provisions of the Certificate of Formation (including any previous amendment[s]) and the Restated Certificate of Formation together with the amendment(s) designated herein supersedes the original Certificate of Formation and all amendments to the Certificate of Formation.

Dated _____, _____

Signature: (Note 2) _____
Print or Type Name: _____
Title: _____

Note 1. Here insert Restated Statement NUMBER(S) which are being amended at this time.

Note 2. Signature and title of person signing for the limited liability company. **MUST BE SIGNED BY A MANAGER OF THE LIMITED LIABILITY COMPANY. IF NO MANAGER, IT MUST BE SIGNED BY A MEMBER.** (If the limited liability company is in the hands of a receiver, executor, or other court appointed fiduciary, trustee, or other fiduciary, it must be signed by that fiduciary.)

Mail fee and DATED AND SIGNED ORIGINAL to: Corporation Division,
Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE
CERTIFICATE OF CANCELLATION
OF NEW HAMPSHIRE LIMITED LIABILITY COMPANY
INSTRUCTIONS FOR COMPLETING Form No. LLC 7
RSA 304-C:59

STATEMENT
NUMBER

FIRST: Exact name of limited liability company.

SECOND:
Dissolution: RSA 304-C:50. A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:
I. The occurrence of events specified in a limited liability company agreement;
II. Unless otherwise provided in the limited liability company agreement, the vote or written consent of a majority of the members; or
III. The issuance of a notice of administrative dissolution under RSA 304-C:53, I or entry of a decree of judicial dissolution under RSA 304-C:51.

THIRD:
RSA 304-C:11 Effective Time and Date of Document.
I. Except as provided in paragraph II, a document accepted for filing is effective:
(a) At the close of business on the date it is filed, as evidenced by the secretary of state's date endorsement of the original document; or
(b) At the time specified in the document as its effective time on the date it is filed.
II. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

NOTE: Any other information the members or managers filing the certificate shall deem proper may be added. If more space is needed, attach additional pages.

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division,
Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.
Leave 1" margins both sides.
Form must be single-sided, on 8 1/2 x 11" paper, and have a one inch margin on both sides. Double sided copies will not be accepted.

Form No. LLC 7
RSA 304-C:59

CERTIFICATE OF CANCELLATION
OF NEW HAMPSHIRE LIMITED LIABILITY COMPANY

THE UNDERSIGNED, UNDER THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY LAWS
SUBMITS THE FOLLOWING CERTIFICATE OF CANCELLATION:

FIRST: The name of the Limited Liability Company is:

SECOND: The reason(s) for filing a certificate of cancellation are:

THIRD: The future effective date (within 90 days of filing date) of the
certificate of cancellation if it is not to be effective upon filing:

_____ .

Dated _____,

Signature: * _____
Print or Type Name: _____
Title: _____

*** MUST BE SIGNED BY A MANAGER IF THE LIMITED LIABILITY COMPANY HAS A
MANAGER, IF NO MANAGER, MUST BE SIGNED BY A MEMBER.** (If the limited
liability company is in the hands of a receiver, executor, or other
court appointed fiduciary, trustee, or other fiduciary, it must be
signed by that fiduciary.)

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00 (SEE TOTAL FEES AT BOTTOM OF PAGE 2)
Use black print or type.

Form No. C 1
RSA 293-A:11.09 &
RSA 304-C:17-a

CERTIFICATE OF CONVERSION
NEW HAMPSHIRE CORPORATION TO A NEW HAMPSHIRE LIMITED LIABILITY COMPANY

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT AND THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY STATUTES, THE UNDERSIGNED DOMESTIC CORPORATION SUBMITS THE FOLLOWING CERTIFICATE OF CONVERSION:

FIRST: The corporation was formed in New Hampshire on (date) _____

SECOND: The name of the corporation immediately prior to the filing of this certificate:

THIRD: The name of the limited liability company as set forth in its certificate of formation:

FOURTH: The designation, number of outstanding shares and number of votes entitled to be cast by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group is as follows:

Designation (class or series) of voting group	No. of shares outstanding	Total no. of votes entitled to be cast	Total no. of votes cast FOR AGAINST	OR	Total no. of undisputed votes FOR
--	------------------------------	---	---	----	---

CERTIFICATE OF CONVERSION

Form No. C 1
(Cont.)

FIFTH: The number of votes cast for the plan by each voting group was sufficient for approval by each voting group.

SIXTH: The plan of conversion is on file at the principal place of business of the limited liability company at (business address) _____

_____ and a copy of the plan of conversion will be furnished by (name of limited liability company) _____

_____ on request and without cost, to any shareholder of (name of corporation) _____

Dated _____, _____

Name of corporation: _____ (Note 1)

By _____

Signature of its _____

Print or type name

Note 1: Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or other officer; or see RSA 293-a:1.20(f) for alternative signatures.

MAIL DATED AND SIGNED ORIGINAL with CERTIFICATE OF FORMATION OF NEW HAMPSHIRE LIMITED LIABILITY COMPANY (Form LLC 1), ADDENDUM TO CERTIFICATE OF FORMATION (Form SRA) AND TOTAL FEES OF \$135.00 TO: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00 (SEE TOTAL FEES AT BOTTOM OF PAGE 2)
Use black print or type.

Form No. C 2
RSA 304-A:56 &
RSA 304-C:17-a

CERTIFICATE OF CONVERSION
NEW HAMPSHIRE GENERAL PARTNERSHIP TO A
NEW HAMPSHIRE LIMITED LIABILITY COMPANY

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE UNIFORM PARTNERSHIP ACT AND THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY STATUTES, THE UNDERSIGNED DOMESTIC GENERAL PARTNERSHIP SUBMITS THE FOLLOWING CERTIFICATE OF CONVERSION:

FIRST: The general partnership was formed in New Hampshire on
(date) _____
_____. (Note 1)

SECOND: The name of the general partnership immediately prior to the
filing of this certificate: _____

THIRD: The domestic general partnership has converted to a domestic
limited liability company.

FOURTH: All of the partners approved the conversion.

FIFTH: The name of the limited liability company as set forth in its
certificate of formation: _____
_____. (Note 2)

CERTIFICATE OF CONVERSION

Form No. C 2
(Cont.)

SIXTH: The plan of conversion is on file at the principal place of business of the limited liability company at (business address) _____

_____ and a copy of the plan of conversion will be furnished by (name of limited liability company) _____

on request and without cost, to any interest holder of (name of general partnership) _____

Dated _____, _____

Name of general partnership: _____

By _____
Signature of its duly authorized partner

Print or type name

Note 1: If the general partnership changed its jurisdiction immediately prior to the conversion, enter state previously formed.

Note 2: If the limited liability company name in the same name as a registered trade name, written consent or a discontinuance form for the trade name signed by all registrants of the trade name, must be submitted with the Certificate of Formation of New Hampshire Limited Liability Company (form LLC 1).

Mail DATED AND SIGNED ORIGINAL with CERTIFICATE OF FORMATION OF NEW HAMPSHIRE LIMITED LIABILITY COMPANY (Form LLC 1), ADDENDUM TO CERTIFICATE OF FORMATION (Form SRA) AND TOTAL FEES OF \$135.00 to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

Filing fee: \$35.00 (SEE TOTAL FEES AT BOTTOM OF PAGE 2)

Use black print or type.

Leave 1" margins both sides.

Form No. C-4

RSA 293-A:11.09,

RSA 293-A:15.03 &

RSA 304-C:17-a

CERTIFICATE OF CONVERSION

FOREIGN CORPORATION TO A NEW HAMPSHIRE LIMITED LIABILITY COMPANY

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE BUSINESS CORPORATION ACT AND THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY STATUTES, THE UNDER-SIGNED FOREIGN CORPORATION SUBMITS THE FOLLOWING CERTIFICATE OF CONVERSION:

FIRST: The corporation was incorporated under the laws of _____

on (date) _____.

SECOND: The name of the corporation immediately prior to the filing of this certificate:

THIRD: The name of the limited liability company as set forth in its certificate of formation:

FOURTH: The designation, number of outstanding shares and number of votes entitled to be cast by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group is as follows:

Designation (class or series) of voting group	No. of shares outstanding	Total no. of votes entitled to be cast	Total no. of votes cast FOR AGAINST	OR	Total no. of undisputed votes FOR
--	------------------------------	---	---	----	---

CERTIFICATE OF CONVERSION

Form No. C-4
(Cont.)

FIFTH: The number of votes cast for the plan by each voting group was sufficient for approval by each voting group.

SIXTH: The plan of conversion is on file at the principal place of business of the limited liability company at (business address) _____

_____ and a copy of the plan of conversion will be furnished by (name of limited liability company) _____

_____ on request and without cost, to any shareholder of (name of corporation) _____

Dated _____, _____

Name of corporation: _____ (Note 1)

By _____

Signature of its _____

Print or type name

Note 1: Signature and title of person signing for the corporation. Must be signed by chairman of the board of directors, president or other officer; or see RSA 293-a:1.20(f) for alternative signatures.

MAIL DATED AND SIGNED ORIGINAL with A CERTIFICATE OF LEGAL EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF INCORPORATION AND CERTIFICATE OF FORMATION OF NEW HAMPSHIRE LIMITED LIABILITY COMPANY (Form LLC 1), ADDENDUM TO CERTIFICATE OF FORMATION (Form SRA) AND TOTAL FEES OF \$135.00 TO: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

APPLICATION FOR REGISTRATION AS A FOREIGN LIMITED LIABILITY COMPANY
INSTRUCTIONS FOR COMPLETING FORM FLLC-1 (RSA 304-C:64)

- FIRST: Exact name of limited liability company; name must match the certificate of good standing provided by the Secretary of State from the state or country of formation. The name must exactly match the name on the certificate, including punctuation.
- SECOND: If the name of the limited liability company does not contain the words "Limited Liability Company", the abbreviation "L.L.C." or similar abbreviation, insert the name of the limited liability company with the words "Limited Liability Company", the abbreviation "L.L.C." or similar abbreviation.
OR
If the limited liability company name is not available for use in New Hampshire, enter the name to be used in New Hampshire. In this case a trade name application must be filed with an additional \$50.00 fee.

If the limited liability company name is available and a trade name in addition to the limited liability company name is to be used, do not enter the trade name in this space but file a trade name application with a \$50.00 fee.
- THIRD:
&
FOURTH: State or country of formation and date formed in that state or country.
- FIFTH: Refer to RSA 304-C: 7 for nature of business permitted.
- SIXTH: The registered office must be the agent's business address. If a post office box is given, the physical location of the business office must also be given. The registered agent shall be the agent of the limited liability company upon whom any process, notice or demand required or permitted by law to be served upon the limited liability company may be served.
"RSA 304-C:66 II (a) & (b)
II. Each foreign limited liability company shall have and maintain in New Hampshire:
(a) A registered office that may be the same as any of its places of business in New Hampshire.
(b) A registered agent, which agent may be either an individual resident of New Hampshire whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, or a foreign corporation authorized to do business in New Hampshire having a business office identical with such registered office."
- SEVENTH: This form must be accompanied by form SRA, certification pursuant to RSA 421-B:11, II, relative to offerings securities (generally, membership interests) for sale in New Hampshire. Please call the Bureau of Securities Regulation (603-271-1463) with any questions you may have with this requirement. Call the Corporate Division (603-271-3244) regarding any other questions concerning this application.
- NOTES: An **ORIGINAL** certificate of existence or document of similar import must accompany this application (photocopies or fax copies will not be accepted). The certificate must be duly authenticated within 60 days of the filing of this application by the proper official of the state or country under the laws of which the limited liability company was formed. (A certificate of good standing regarding taxes from a state department of revenue administration is not acceptable.)

Mail fees, DATED AND SIGNED ORIGINAL, CERTIFICATE OF EXISTENCE OR DOCUMENT OF SIMILAR IMPORT ISSUED BY THE STATE OR COUNTRY OF FORMATION AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

Filing fee: \$ 50.00

Fee for Form SRA: \$ 50.00

Total fees: \$100.00

Use black print or type.

Form must be single-sided, on 8 1/2 x11" paper;

double sided copies will not be accepted.

Form FLLC-1
RSA 304-C:12

APPLICATION FOR REGISTRATION AS A
FOREIGN LIMITED LIABILITY COMPANY

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY LAWS, THE UNDERSIGNED HEREBY APPLIES FOR REGISTRATION TO TRANSACT BUSINESS IN NEW HAMPSHIRE AND FOR THAT PURPOSE SUBMITS THE FOLLOWING STATEMENT:

FIRST: The name of the limited liability company is _____

SECOND: The name which it proposes to register and do business in New Hampshire is _____

THIRD: It is formed under the laws of _____

FOURTH: The date of its formation is _____

FIFTH: The nature of the business or purposes to be conducted or promoted in New Hampshire is _____

SIXTH: The name of its registered agent in New Hampshire is _____

and the **street address**, town/city (including zip code and post office box, if any) of its registered office is (agent's business address in New Hampshire) _____

SEVENTH: The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

APPLICATION FOR REGISTRATION AS A
FOREIGN LIMITED LIABILITY COMPANY OF

Form FLLC-1
(Cont.)

*Signature: _____

Print or type name: _____

Title: _____

Date signed: _____

Complete address of person signing: _____

* Shall be executed on behalf of the foreign limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its formation, or, if the foreign limited liability company is in the hands of a receiver, executor, or other court appointed fiduciary, trustee, or other fiduciary, it must be signed by that fiduciary.

DISCLAIMER: All documents filed with the Corporate Division become public records and will be available for public inspection in either tangible or electronic form.

Mail fees, DATED AND SIGNED ORIGINAL, CERTIFICATE OF EXISTENCE OR DOCUMENT OF SIMILAR IMPORT ISSUED BY THE STATE OR COUNTRY OF FORMATION AND FORM SRA to:
Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

APPLICATION FOR REGISTRATION AS A FOREIGN PROFESSIONAL LIMITED LIABILITY COMPANY INSTRUCTIONS FOR COMPLETING FORM FPLLC-1 (RSA 304-C:64 OR RSA 304-D:16)

- FIRST:** Exact name of limited liability company; name must match the certificate of good standing provided by the Secretary of State from the state or country of formation. The name must exactly match the name on the certificate, including punctuation.
- SECOND:** RSA 304-D:6 requires the name of a professional limited liability company, shall end in "Professional Limited Liability Company", the abbreviation "P.L.L.C. or similar abbreviation. If the name does not contain these words or an abbreviation thereof, insert the name of the professional limited liability company with the words "Professional Limited Liability Company", the abbreviation "P.L.L.C." or a similar abbreviation.
- OR**
- If the limited liability company name is not available for use in New Hampshire, enter the name to be used in New Hampshire. In this case a trade name application must be filed with an additional \$50.00 fee and a copy of the members' resolution to use the trade name in New Hampshire. (A limited liability company designation cannot be used on the trade name.) The resolution must be signed by the manager of the limited liability company. If no manager, it must be signed by a member, or if the limited liability company is in the hands of a receiver, executor, or other court appointed fiduciary, trustee, or other fiduciary, it must be signed by that fiduciary. If the limited liability company name is available and a trade name in addition to the limited liability company name is to be used, do not enter the trade name in this space but file a trade name application with a \$50.00 fee.
- THIRD:**
- &** State or country of formation and date formed in that state or country.
- FOURTH:**
- FIFTH:** Refer to RSA 304-C: 7 for nature of business permitted.

RSA 304-D:1 VI "Professional service" means any service which may lawfully be rendered only by certified public accountants, public accountants, architects, attorneys, podiatrists, chiropractors, dentists, pharmacists, professional engineers, land surveyors, registered professional nurses, optometrists, physicians and surgeons, psychologists, veterinarians, and all other professionals licensed, registered, certified, or otherwise authorized and permitted to practice independently under the provisions of RSA 309-A, 310-A, 311, 315, 316-A, 317-A, 318, 326-B, 327, 329, 330-A, or 332-B.

- SIXTH:** The registered office must be the agent's business address. If a post office box is given, the physical location of the business office must also be given. The registered agent shall be the agent of the professional limited liability company upon whom any process, notice or demand required or permitted by law to be served upon the professional limited liability company may be served.

"RSA 304-C:66 II (a) & (b)

II. Each foreign limited liability company shall have and maintain in New Hampshire:

- (a) A registered office that may be the same as any of its places of business in New Hampshire.
- (b) A registered agent, which agent may be either an individual resident of New Hampshire whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, or a foreign corporation authorized to do business in New Hampshire having a business office identical with such registered office."

- SEVENTH:** This form must be accompanied by form SRA, certification pursuant to RSA 421-B:11, II, relative to offerings securities (generally, membership interests) for sale in New Hampshire. Please call the Bureau of Securities Regulation (603-271-1463) with any questions you may have with this requirement. Call the Corporate Division (603-271-3244) regarding any other questions concerning this application.

- EIGHTH:** This statement must be completed.

- NOTES:** An **ORIGINAL** certificate of existence or document of similar import must accompany this application (photocopies or fax copies will not be accepted). The certificate must be duly authenticated within 60 days of the filing of this application by the proper official of the state or country under the laws of which the professional limited liability company was formed. (A certificate of good standing regarding taxes from a state department of revenue administration is not acceptable.)

Mail fees, DATED AND SIGNED ORIGINAL, CERTIFICATE OF EXISTENCE OR DOCUMENT OF SIMILAR IMPORT ISSUED BY THE STATE OR COUNTRY OF FORMATION AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

Filing fee: \$ 50.00

Fee for Form SRA: \$ 50.00

Total fees: \$100.00

Form FPLLC-1
RSA 304-C:12
& RSA 304-D

Use black print or type.
Form must be single-sided, on 8 1/2 x11" paper;
double sided copies will not be accepted.

APPLICATION FOR REGISTRATION AS A
FOREIGN PROFESSIONAL LIMITED LIABILITY COMPANY

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY LAWS, THE UNDERSIGNED HEREBY APPLIES FOR REGISTRATION TO TRANSACT BUSINESS IN NEW HAMPSHIRE AND FOR THAT PURPOSE SUBMITS THE FOLLOWING STATEMENT:

FIRST: The name of the professional limited liability company is _____

SECOND: The name which it proposes to register and do business in New Hampshire is _____

THIRD: It is formed under the laws of _____

FOURTH: The date of its formation is _____

FIFTH: The nature of the business or purposes the professional limited liability company will conduct or promote in New Hampshire is _____

SIXTH: The name of the professional limited liability company's registered agent in New Hampshire is _____
and the **street address**, town/city (including zip code and post office box, if any) of its registered office is
(agent's business address in New Hampshire) _____

SEVENTH: The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

EIGHTH: All the members and managers and those of its officers as required by the laws of (enter the state of formation) _____ and by RSA 304-D:12 are licensed in one or more states, territories of the United States or the District of Columbia to render a professional service described in the statement of purpose of the professional limited liability company.

APPLICATION FOR REGISTRATION AS A FOREIGN
PROFESSIONAL LIMITED LIABILITY COMPANY OF

Form FPLLC-1
(Cont.)

*Signature: _____

Print or type name: _____

Title: _____

Date signed: _____

Complete address of person signing: _____

* Shall be executed on behalf of the foreign professional limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its formation or, if the foreign limited liability company is in the hands of a receiver, executor or other court appointed fiduciary, trustee or other fiduciary, it must be signed by that fiduciary.

DISCLAIMER: All documents filed with the Corporate Division become public records and will be available for public inspection in either tangible or electronic form.

Mail fees, DATED AND SIGNED ORIGINAL, CERTIFICATE OF EXISTENCE OR DOCUMENT OF SIMILAR IMPORT ISSUED BY THE STATE OR COUNTRY OF FORMATION AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE
APPLICATION FOR AMENDED CERTIFICATE OF
FOREIGN LIMITED LIABILITY COMPANY REGISTRATION
INSTRUCTIONS FOR COMPLETING Form No. FLLC 2 (RSA 304-C:67)

STATEMENT
NUMBER

FIFTH (b): If the name of the limited liability company does not contain the words "Limited Liability Company" or the abbreviation "L.L.C.", insert the name of the limited liability company with the words "limited liability company", the abbreviation "L.L.C." or similar abbreviation.

OR

If a professional limited liability company, RSA 304-D:6 requires the name shall end in "Professional Limited Liability Company" or the abbreviation "P.L.L.C."

OR

If the limited liability company name is not available for use in New Hampshire, enter the name to be used in New Hampshire. In this case a trade name application must be filed with an additional \$50.00 fee and a copy of the members' resolution to use the trade name in New Hampshire. (A limited liability company designation cannot be used on the trade name.) The resolution must be signed by the manager of the limited liability company. If no manager, it must be signed by a member, or if the limited liability company is in the hands of a receiver, executor, or other court appointed fiduciary, trustee, or other fiduciary, it must be signed by that fiduciary. If the limited liability company name is available, and a trade name in addition to the limited liability company name is to be used, do not enter the trade name in this space but file a trade name application with a \$50.00 fee.

An ORIGINAL certificate of existence or document of similar import must accompany this application. (Photocopies or fax copies will not be accepted.) The certificate must be duly authenticated within 60 days of the filing of this application by the proper official of the state or country under the laws of which the limited liability company was formed. (A certificate of good standing regarding taxes from a state department of revenue administration is not acceptable.)

Mail fee, **DATED AND SIGNED ORIGINAL AND CERTIFICATE OF EXISTENCE OR DOCUMENT OF SIMILAR IMPORT ISSUED BY THE STATE OR COUNTRY OF FORMATION** to: Corporation Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. FLLC 2
RSA 304-C:67

APPLICATION FOR AMENDED REGISTRATION FOR
FOREIGN LIMITED LIABILITY COMPANY

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY LAWS, THE UNDERSIGNED HEREBY APPLIES FOR AN AMENDED REGISTRATION TO TRANSACT BUSINESS IN NEW HAMPSHIRE AND FOR THAT PURPOSE SUBMITS THE FOLLOWING STATEMENT:

FIRST: The name of the limited liability company is:

SECOND: The name the limited liability company is currently using in the state of New Hampshire is: _____

THIRD: The state or country of formation is: _____

FOURTH: The date the limited liability company was authorized to transact business in the state of New Hampshire is: _____

FIFTH: This application is filed for the following reason(s) (complete all applicable items)

a. The limited liability company has changed its name to:

b. The name the limited liability company will hereafter use in the state of New Hampshire is changed to:

c. The limited liability company has changed the state or country of its formation to: _____

Dated _____, _____

Signature: * _____

Print or Type Name: _____

Title: _____

Phone Number: _____

Email Address: _____

* **MUST BE SIGNED BY A MANAGER IF THE LIMITED LIABILITY COMPANY HAS A MANAGER. IF NO MANAGER, MUST BE SIGNED BY A MEMBER.** (If the limited liability company is in the hands of a receiver, executor, or other court appointed fiduciary, trustee, or other fiduciary, it must be signed by that fiduciary.)

Mail \$35.00 fee, DATED AND SIGNED ORIGINAL AND CERTIFICATE OF EXISTENCE OR DOCUMENT OF SIMILAR IMPORT ISSUED BY THE STATE OR COUNTRY OF FORMATION to:
Corporation Division, Department of State, 107 North Main Street, Concord NH
03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form FLLC-3
RSA 304-C:68

APPLICATION FOR CERTIFICATE OF CANCELLATION OF
REGISTRATION OF FOREIGN LIMITED LIABILITY COMPANY

PURSUANT TO THE PROVISIONS OF CHAPTER 304-C, SECTION 68 OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, THE UNDERSIGNED HEREBY APPLIES FOR A CERTIFICATE OF CANCELLATION OF REGISTRATION, AND FOR THAT PURPOSE SUBMITS THE FOLLOWING STATEMENT:

FIRST: The name of the limited liability company is _____
_____.

SECOND: It is formed under the laws of _____.

THIRD: It is not doing business in New Hampshire.

FOURTH: It hereby surrenders its certificate of registration to transact business in New Hampshire.

FIFTH: It revokes the authority of its registered agent for service of process in this state and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time it was authorized to do business in this state may thereafter be made on it by service thereof upon the secretary of state.

SIXTH: The mailing address to which a person may mail a copy of any process against the limited liability company that may be served on him is _____
_____.

SEVENTH: Limited liability company is in good standing as evidenced by the filing of all annual reports due.

EIGHTH: A statement is attached from the New Hampshire Department of Revenue Administration that all taxes due from or accrued by the limited liability company through the date of the application for a certificate of cancellation of registration have been either assessed and paid or adequately provided for in a manner acceptable to the New Hampshire Department of Revenue Administration. Yes ☐

APPLICATION FOR CERTIFICATE OF CANCELLATION
OF REGISTRATION OF _____Form FLLC 3
(Cont.)

Dated _____, _____

*Signature: _____

Print or type name: _____

Title: _____

- * Shall be executed on behalf of the foreign limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its formation, or, if the foreign limited liability company is in the hands of a receiver, executor, or other court appointed fiduciary, trustee, or other fiduciary, it must be signed by that fiduciary.

SECRETARY OF STATE'S CANCELLATION FILING REQUIREMENTS:

1. Obtain original tax certificate from the N.H. Dept. of Revenue Administration.

To obtain this tax certificate, Certificate Request Form AU-22 must be completed and submitted to the N.H. Dept. of Revenue Administration. Follow this link to obtain the required form:
<http://webster.state.nh.us/revenue/business/certificates.htm>

2. Mail completed Form FLLC-3 with original tax certificate from the Dept. of Revenue Administration and \$35.00 filing fee to:

Corporation Division
Department of State
107 North Main Street
Concord, NH 03301-4989.

FORM
AU-22

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION
CERTIFICATE REQUEST FORM

Steps 1 through 5 must be completed. If not, your request will be considered incomplete and rejected.

FOR DRA USE ONLY

STEP 1 PLEASE PRINT OR TYPE	BUSINESS NAME		FEDERAL EMPLOYER IDENTIFICATION NUMBER			
	NUMBER & STREET ADDRESS		DEPARTMENT IDENTIFICATION NUMBER (for SMLLC)			
	ADDRESS (CONTINUED)		SOCIAL SECURITY NUMBER			
	CITY/TOWN, STATE, ZIP CODE		MEALS & RENTAL LICENSE NUMBER			
	CONTACT PERSON (Enclose original Form DP-2848, New Hampshire Power of Attorney if other than corporate officer, partner or member)		ENTITY TYPE CORPORATION PROPRIETOR PARTNERSHIP ☐ ☐ ☐			
	CONTACT PERSON TELEPHONE NUMBER					
STEP 2 CERTIFICATE TYPE	GOOD STANDING ☐		DISSOLUTION ☐	CANCELLATION OF DOMESTIC LLC ☐	WITHDRAWAL ☐	CANCELLATION OF FOREIGN LLC ☐
STEP 3	Line 1 Date qualified with Secretary of State's Office to do business in New Hampshire: _____					
	Line 2 Date of last Business Activity in New Hampshire? _____ If this is a request for a Withdrawal or Dissolution, has a final return encompassing the last day of business been filed? Yes ☐ No ☐					
	Line 3 Reason for Certificate request: _____ _____ _____					
	Line 4 Which taxes have you filed with NH in the past (Check all that apply)? ☐ Interest and Dividends Tax ☐ Real Estate Transfer Tax ☐ Communications Services Tax ☐ Business Taxes ☐ Meals and Rentals Tax ☐ Other _____					
	Line 5 When was last return filed with the NH Department of Revenue? _____					
	Line 6 If filing as part of Combined Group indicate Name and FEIN of Company under which this entity files its NH returns: _____ _____					
STEP 4 ATTACH- MENTS	A non-refundable fee of \$30.00 made payable to the State of New Hampshire, as required under RSA 77-A:18 and RSA 77-E:12, must accompany this form. If applicable, enclose: 1) Federal Form 966 2) Minutes of Meeting describing Dissolution/Liquidation/Cancellation.					
STEP 5 SIGNATURE AND TITLE	SIGNATURE (IN INK) OF CORPORATE OFFICER/PARTNER/MEMBER/PROPRIETOR					DATE
	PRINT NAME					TITLE

Approximate response time is 60 days for a Certificate of Dissolution, Withdrawal or Cancellation and approximately 30 days for a Certificate of Good Standing.

Do Not Write Below This Line

FORM
AU-22

CERTIFICATION PAYMENT FORM
FOR DRA USE ONLY

FOR DRA USE ONLY

FOR DRA USE ONLY

BUSINESS NAME	Good Standing	Dissolution	Withdrawal	Cancellation
	☐	☐	☐	☐
	009	006	006	019

FEIN/SSN

Certificate Fee \$ 30.00
Make check payable to:
State of New Hampshire

PREPARED BY

NH Dept. of Revenue Administration
MAIL
TO: Audit Division
45 Chenell Drive, PO Box 457
Concord, NH 03302-0457

FORM
AU-22

NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION
CERTIFICATE REQUEST FORM
INSTRUCTIONS

STEP 1 BUSINESS INFORMATION	Please enter the business name, address, contact name, the telephone number, entity type, and applicable identification number in the spaces provided. If the contact person is other than the officer, partner, member or proprietor, a Form DP-2848, Power of Attorney, must accompany this form.
STEP 2 CERTIFICATE TYPE	Check the box indicating the type of certificate you are requesting. A separate Form AU-22 must be submitted for each additional certificate request.
STEP 3	Line 1 Enter the date you qualified with the Secretary of State's Office to do business in New Hampshire. Line 2 Enter the last day of business activity in New Hampshire for the entity for which you are requesting the certificate. A final return encompassing the date of withdrawal, dissolution or cancellation must be filed, check the appropriate box to indicate if the final return has been filed. Line 3 Provide a complete explanation of the reason(s) for the certificate request. Line 4 Check the box (es) to indicate all New Hampshire taxes you have filed with the state of New Hampshire. Line 5 Enter the date of the last return filed with the State of New Hampshire. Line 6 Enter the name and Federal Employer Identification Number (FEIN) of the parent company, if applicable. If not, specify "No Parent" or principal NH filer if entity files as a member of a combined group.
STEP 4 ATTACHMENTS	Dissolution, Withdrawal or Cancellation. If required to file, attach a final New Hampshire Business Enterprise and/or Business Profits Tax return for the period that includes the last date of business in NH. A copy of the first four pages of the federal return actually filed with the Internal Revenue Service (IRS) must be attached to the NH return. If not required to file, attach a copy of the first four pages of the federal return actually filed with the IRS for the period that includes the last date of business in NH. For dissolution, attach copies of Federal Form 966, the minutes of the board of directors' meeting authorizing the dissolution and a plan of liquidation and a schedule detailing the distribution of all NH assets. If signed by a representative other than the officer, partner, member or proprietor, attach a power of attorney or a personal letter signed by a corporate officer indicating an individual designated to act as your agent in tax matters, or a letter authorizing us to send the certificate to someone other than the taxpayer. Good Standing. Attach any and all returns that are due but have not yet been filed with the Department, including copies of all federal pages, as filed with the IRS.
STEP 5 SIGNATURE AND TITLE	Signature, in ink, of a corporate officer, member, partner or proprietor, the title of that individual and the date the request was signed. If other than the corporate officer, member, partner or proprietor, attach a completed NH DP-2848, Power of Attorney.
NEED HELP	Call the Customer Service Office at (603) 271-2191, Monday through Friday, 8:00 am - 4:30 pm.
NEED FORMS	To obtain additional forms you may access our web site at www.revenue.nh.gov or call the forms line at (603) 271-2192.
ADA COMPLIANCE	Individuals who need auxiliary aids for effective communications in programs and services of the New Hampshire Department of Revenue Administration are invited to make their needs and preferences known. Individuals with hearing or speech impairments may call TDD Access: Relay NH 1-800-735-2964.

FEE: \$50.00

Payable To:
State of New Hampshire

HELP LINE TDD ACCESS:
RELAY NH 1-800-735-2964

State of New Hampshire
Department of State
Corporation Division
Concord Tel. 603-271-3244

Location: State House Annex - 3rd floor
Mailing Address: Corporation Division, Department of State
107 North Main St., Concord, NH 03301-4989

APPLICATION FOR REGISTRATION OF TRADE NAME

(PLEASE TYPE OR PRINT CLEARLY)

1. BUSINESS NAME:

(Name cannot include "INC." or other corporate designation)

2. BUSINESS ADDRESS:

No. & Street (and P.O. Box, if any)	City / town	State	Zip
-------------------------------------	-------------	-------	-----

3. BRIEF DESCRIPTION OF KIND OF BUSINESS TO BE CARRIED ON:

4. DATE BUSINESS ORGANIZED: _____

5. APPLICANT'S NAME, ADDRESS & SIGNATURE. IF APPLICANT IS A CORPORATION OR OTHER ENTITY, LIST CORPORATION'S OR ENTITY'S NAME & TITLE OF PERSON SIGNING.

A.	_____ TYPE OR PRINT NAME	_____ NO. STREET
	_____ Signature	_____ TOWN/CITY STATE ZIP
B.	_____ TYPE OR PRINT NAME	_____ NO. STREET
	_____ Signature	_____ TOWN/CITY STATE ZIP
C.	_____ TYPE OR PRINT NAME	_____ NO. STREET
	_____ Signature	_____ TOWN/CITY STATE ZIP
D.	_____ TYPE OR PRINT NAME	_____ NO. STREET
	_____ Signature	_____ TOWN/CITY STATE ZIP

About Trade Name Registration

New Hampshire law requires that anyone doing business under any name other than his or her own must register that name with the Secretary of State. The fee for registration is \$50.00.

The purpose of registration is to let the public know who is transacting business under a particular business name. The Secretary of State will not register a name that might be confused with one already registered.

Filling out the trade name application requires the following:

1. Exact trade name being registered (your name will be checked for **availability** when the application is filed).

You may call the Secretary of State's Information Line (603-271-3246) to have the business name checked for **availability**. However, even if you have checked your name with the Secretary of State's Information Line, you should **not** consider it finally approved or proceed with printing, advertising, etc. using that name until your application is processed and you receive your trade name certificate. A telephone name check is preliminary only.

2. Complete address of the business.
3. Brief description of type of business (e.g. real estate, hairdresser, etc.).
4. Date business was organized.
5. Applicants: may be an individual, corporation, limited liability company, limited liability partnership, group of partners or association.

Original signatures of all applicants; if a corporation, of an authorized officer; if a limited liability company, by the manager or if no manager, by a member; if a limited liability partnership, by one or more authorized partners.

FEE: \$10.00

Payable To:
State of New Hampshire

HELP LINE TDD ACCESS:
RELAY NH 1-800-735-2964

State of New Hampshire
Department of State

Corporate Division
Concord Tel. 603-271-3244

Location: State House Annex - 3rd floor
Mailing Address: Corporate Division, Department of State
107 North Main St., Concord, NH 03301-4989

CERTIFICATE OF ADDITION IN MEMBERS USING TRADE NAME

Be it known that: **(PLEASE TYPE OR PRINT CLEARLY)**

Name of New Owner(s)	No. & Street	City/Town	State	Zip

has/have been added to the trade name:

(Business Name)				
at (Business Address)				
(No.)	(Street)	(City/Town)	(State)	(Zip)

Effective date: _____

The owners now comprising the trade name are (if more space is needed, attach additional sheet[s]):

Name of Owners	No. & Street	City/Town	State	Zip

Signed: (must be signed by all owners *including new owners*)

Signature	Print or type name
Signature	Print or type name
Signature	Print or type name
Signature	Print or type name
Signature	Print or type name
Signature	Print or type name

DISCLAIMER: All documents filed with the Corporate Division will be publicly available for inspection physically, electronically or in other media.

FEE: \$10.00

Payable To:

State of New Hampshire

HELP LINE TDD ACCESS:
RELAY NH 1-800-735-2964

State of New Hampshire

Department of State

Corporate Division
Concord Tel. 603-271-3244

Location: State House Annex - 3rd floor
Mailing Address: Corporate Division, Department of State
107 North Main St., Concord, NH 03301-4989

CERTIFICATE OF WITHDRAWAL IN MEMBERS USING TRADE NAME

Be it known that: **(PLEASE TYPE OR PRINT CLEARLY)**

Name of Owner(s) Withdrawing	No. & Street	City/Town	State	Zip

doing business under the trade name

(Business Name)

at (Business Address) _____

(No.) (Street) (City/Town) (State) (Zip)

has/have withdrawn from said trade name effective (date) _____.

The owners now comprising the trade name are (if more space is needed, attach additional sheet[s]):

Name of Owners	No. & Street	City/Town	State	Zip

Signed: (must be signed by *all withdrawing and remaining owners*)

Signature	Print or type name
Signature	Print or type name
Signature	Print or type name
Signature	Print or type name
Signature	Print or type name
Signature	Print or type name

DISCLAIMER: All documents filed with the Corporate Division will be publicly available for inspection physically, electronically or in other media.

FEE: \$10.00

Payable To:
State of New Hampshire

HELP LINE TDD ACCESS:
RELAY NH 1-800-735-2964

State of New Hampshire
Department of State
Corporation Division
Concord Tel. 603-271-3244

Location: State House Annex - 3rd floor
Mailing Address: Corporation Division, Department of State
107 North Main St., Concord, NH 03301-4989

CERTIFICATE OF DISCONTINUANCE OF USE OF TRADE NAME

Be it known that: **(PLEASE TYPE OR PRINT CLEARLY)**

NAME OF OWNER(S)	NO. & STREET	CITY/TOWN	STATE	ZIP

doing business under the trade name:

_____ (Business Name)

at (Business Address) _____
(No.) (Street) (City/Town) (State) (Zip)

have discontinued use of the above trade name effective (date) _____.

Signed: (must be signed by all owners)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**STATE OF NEW HAMPSHIRE
SECRETARY OF STATE**

INSTRUCTIONS FOR TRADE/SERVICE MARK APPLICATION

APPLICANT may be an individual, partnership, or corporation. Use full name.
If a New Hampshire corporation, it must appear in the N.H. Secretary of State's files.

DESCRIPTION OF MARK: Describe mark fully, both wording and design or pictorial features such as logo. It must be clear from this description and the specimens exactly what is to be registered, or the application will be rejected.

DESCRIPTION OF GOODS OR SERVICES should describe what the mark is being applied to.

CLASS: Enter one class only on each registration; see list below.

MARK APPLIED TO should describe how the mark is to be used, i.e. on labels attached to goods, displays such as advertising, etc.

DATES OF FIRST USE: These are the dates the mark was first used 1) anywhere and 2) in New Hampshire. The dates may be the same, but cannot be in the future.

SIGNATURES (by an officer if a corporation or partner if a partnership) MUST BE NOTARIZED.

ENCLOSE \$50 AND THREE IDENTICAL SPECIMENS OR FACSIMILES ON PAPER.

NOTE: A mark may not be registered if it consists of or comprises the flag, coat of arms, etc. of the United States, any state or foreign country, or the name, signature, or portrait of any living individual, except with written consent. A mark that is merely descriptive of goods or services may not be registered unless it has become distinctive of the applicant's goods or services. The Secretary of State may require proof of continuous use for five years as evidence that the mark has become distinctive. See RSA 350-A:2 for further restrictions.

CLASSES:

Goods :

1. Raw or partly prepared materials
2. Receptacles
3. Baggage, animal equipment; portfolios, pocketbooks
4. Abrasives and polishing materials
5. Adhesives
6. Chemicals and chemical compositions
7. Cordage
8. Smokers' articles not including tobacco products
9. Explosives, firearms, equipment and projectiles
10. Fertilizers
11. Inks and inking material

CLASSES (continued)

12. Construction materials
13. Hardware and plumbing and steam-fitting supplies
14. Metals and metal castings and forgings
15. Oils and greases
16. Paints and painters' materials
17. Tobacco products
18. Medicines and pharmaceutical preparations
19. Vehicles
20. Linoleum and oiled cloth
21. Electrical apparatus, machines , and supplies
22. Games, toys and sporting goods
23. Cutlery, machinery, and tools, and parts thereof
24. Laundry appliances and machines
25. Locks and safes
26. Measuring and scientific appliances
27. Horological instruments
28. Jewelry and precious-metal ware
29. Brooms, brushes and dusters
30. Crockery, earthenware, and porcelain
31. Filters and refrigerators
32. Furniture and upholstery
33. Glassware
34. Heating, lighting, and ventilating apparatus
35. Belting, hose, machinery packing, and non-metallic tires
36. Musical instruments and supplies
37. Paper and stationery
38. Prints and publications
39. Clothing
40. Fancy goods, furnishings, and notions
41. Canes, parasols, and umbrellas
42. Knitted, netted and textile fabrics, and substitutes therefor
43. Thread and yarn
44. Dental, medical and surgical appliances
45. Soft drinks and carbonated waters
46. Foods and ingredients of foods
47. Wines
48. Malt beverages and liquors
49. Distilled alcoholic liquors
50. Merchandise not otherwise classified
51. Cosmetics and toilet preparations
52. Detergents and soaps

Services:

100. Miscellaneous
101. Advertising & business
102. Insurance & financial
103. Construction & repair
104. Communications
105. Transportation & storage
106. Material treatment
107. Education & entertainment

STATE OF NEW HAMPSHIRE -- SECRETARY OF STATE

APPLICATION FOR
REGISTRATION OF TRADEMARK/SERVICE MARK (RSA 350-A)

Applicant: _____

Business address: _____

State of incorporation (if a corporation): _____

Description of Mark: _____

Description of Goods or Services: _____ Class: _____
(enter one only)Mark applied to: _____
(goods, labels, containers, displays, etc.)

Date of first use: _____ In (State): _____

Date of first use in New Hampshire: _____

STATEMENT: Applicant is the owner of this mark, and no other person to his/her knowledge and belief has the right to use said mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

Signed _____
(by an officer, if a corporation)_____
(print or type name)

State of _____

County of _____ ss.

Before me personally appeared _____, who
signed the foregoing instruments in my presence, on this _____ day
of _____,

(Notary Public or Justice of the Peace)

ENCLOSE FEE (\$50.00) PAYABLE TO SECRETARY OF STATE,
AND THREE IDENTICAL, REPRODUCIBLE SPECIMENS OR FACSIMILES OF MARK

MAIL TO: Corporation Division, Department of State,
107 North Main Street, Concord, NH 03301-4989.

Telephone (603) 271-3244

STATE OF NEW HAMPSHIRE - SECRETARY OF STATE
ASSIGNMENT OF TRADEMARK/SERVICE MARK REGISTRATION
RSA 350-A:6

Assignor name _____
Assignor business address _____
Description of mark _____
Recorded in Volume _____ Page _____ Registration Date _____
Class # _____
Assignee name _____
Assignee business address _____

Statement: For good and valuable consideration, receipt of which is hereby acknowledged, _____ does hereby assign to _____ all right, title and interest in and to _____ the mark listed above, together with the good will of the business in which the mark is used (or that part of the good will of the business connected with the use of and symbolized by the mark) and the registration thereof.

(signed by assignor, with title)

```
(print or type name)
```

Subscribed and sworn to before me this _____ day of _____.

(signature of notary public)

Enclose fee (\$10.00) payable to SECRETARY OF STATE.

Mail to: Corporation Division, Department of State,
107 North Main Street, Concord NH 03301-4989

State of New Hampshire

REGISTRATION OF NEW HAMPSHIRE LIMITED LIABILITY PARTNERSHIP INSTRUCTIONS FOR COMPLETING FORM LLP-1 (RSA 304-A:44)

NAME: Name must contain the words "Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.

REGISTERED AGENT/REGISTERED OFFICE: Each registered limited liability partnership shall have and maintain in New Hampshire:

- (a) A registered office that may be the same as any of its places of business; and
- (b) A registered agent, which agent may be either an individual resident of New Hampshire whose business office is identical with the partnership's registered office, or a domestic corporation, or a foreign corporation authorized to do business in New Hampshire having a business office identical with such registered office.

ADDITIONAL INFORMATION: Any other matters the partnership determines to include may be added. If more space is needed, attach additional pages.

SIGNATURE: The registration form must be executed by one or more partners authorized to execute the document. If the partner executing the document is other than a natural person, the document shall be executed on the partner's behalf by a general partner of a limited partnership, an officer of a corporation, a member or manager of a limited liability company or a person authorized by law to execute on behalf of the partner.

STATEMENT REGARDING SECURITIES: This form must be accompanied by form SRA, certification pursuant to RSA 421-B:11, II, stating that the limited liability partnership's securities (generally, partnership interests) have either been registered or exempted from registration under the New Hampshire Securities Act. Call the Bureau of Securities Regulation (603-271-1463) with any questions you may have with this requirement. Call the Corporation Division (603-271-3244) regarding any other questions concerning this application.

Mail fee, DATED AND SIGNED ORIGINAL AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

Filing Fee: \$50.00
Fee for Form SRA: \$50.00
Total fees: \$100.00
Use black print or type.

Form LLP-1
RSA 304-A:44

REGISTRATION OF
NEW HAMPSHIRE LIMITED LIABILITY PARTNERSHIP

THE UNDERSIGNED, UNDER THE NEW HAMPSHIRE LIMITED LIABILITY PARTNERSHIP LAWS HEREBY SUBMITS THE FOLLOWING STATEMENTS FOR REGISTRATION:

FIRST: The name of the limited liability partnership is _____

SECOND: The address of its principal office is _____

THIRD: The name of the limited liability partnership's registered agent for service of process in New Hampshire is _____
and the street address, town/city (including zip code and post office box, if any) of its registered office is (agent's business address) _____

FOURTH: The business in which the partnership will engage is (brief statement) _____

FIFTH: The sale or offer for sale of any ownership interests in this business will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

*Signature of partner: _____

Print or type name: _____

Date signed: _____

*Must be executed by one or more partners authorized to execute the document. If the partner executing the document is other than a natural person, the document shall be executed on the partner's behalf by a general partner of a limited partnership, an officer of a corporation, a member or manager of a limited liability company or a person authorized by law to execute on behalf of the partner.

DISCLAIMER: All documents filed with the Corporate Division become public records and will be available for public inspection in either tangible or electronic form.

Mail fee, DATED AND SIGNED ORIGINAL AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. LLP 2
RSA 304-A:48

NOTICE OF CHANGE IN REGISTRATION OF A
NEW HAMPSHIRE REGISTERED LIMITED LIABILITY PARTNERSHIP

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE LIMITED LIABILITY PARTNERSHIP LAWS, THE UNDERSIGNED HEREBY SUBMITS THE FOLLOWING STATEMENTS FOR NOTICE OF CHANGE:

FIRST: The name under which the New Hampshire registered limited liability partnership was registered is:

SECOND: The date the New Hampshire limited liability partnership originally registered was: _____

THIRD: The new name and/or new information is:

NOTICE OF CHANGE IN REGISTRATION FOR A
NEW HAMPSHIRE REGISTERED LIMITED LIABILITY PARTNERSHIP

Form No. LLP 2
(Cont.)

(registered limited liability partnership name
as presently recorded)

Dated _____, _____

(Exact present name of registered limited liability partnership)

★ _____
(Signature of partner)

(Type or print name of person signing)

Complete address of person signing:

★ Must be executed by one or more partners authorized to execute the document. If the partner executing the document is other than a natural person, the document shall be executed on the partner's behalf by a general partner of a limited partnership, an officer of a corporation, a member or manager of a limited liability company, or a person authorized by law to execute on behalf of the partner.

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division,
Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. LLP 4
RSA 304-A:44 IV (a) (1)

NOTICE OF WITHDRAWAL OF REGISTRATION OF
NEW HAMPSHIRE LIMITED LIABILITY PARTNERSHIP

THE UNDERSIGNED, UNDER THE NEW HAMPSHIRE LIMITED LIABILITY PARTNERSHIP LAWS
HEREBY SUBMITS THE FOLLOWING NOTICE FOR WITHDRAWAL OF REGISTRATION:

FIRST: The name of the limited liability partnership is _____

SECOND: The date on which the limited liability partnership registered
was _____
month day year

THIRD: This notice is hereby submitted to voluntarily withdraw the
registration.

Dated _____, _____

* Signature: _____
Print or Type Name: _____

Must be executed by one or more partners authorized to execute the document. If the partner executing the document is other than a natural person, the document shall be executed on the partner's behalf by a general partner of a limited partnership, an officer of a corporation, a member or manager of a limited liability company, or a person authorized by law to execute on behalf of the partner.

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$15.00
Use black print or type.

Form No. LLP 5
RSA 304-A:49 II

REGISTERED LIMITED LIABILITY PARTNERSHIP

NOTICE OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT, OR BOTH.

PURSUANT TO THE PROVISIONS OF SECTION 49 II OF CHAPTER 304-A OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, THE UNDERSIGNED REGISTERED LIMITED LIABILITY PARTNERSHIP, FORMED UNDER THE LAWS OF THE STATE OF _____ SUBMITS THE FOLLOWING NOTICE FOR THE PURPOSE OF CHANGING ITS REGISTERED OFFICE OR ITS REGISTERED AGENT, OR BOTH, IN THE STATE OF NEW HAMPSHIRE:

FIRST: The name of the registered limited liability partnership is:

SECOND: The name of its registered agent is recorded as:

THIRD: The street address, town/city of its registered office is recorded as:

FOURTH: The name of its new registered agent is (Note 1):

FIFTH: The street address, town/city of its new registered office is (Note 1):

SIXTH: The street address, town/city of its registered office and the address of the business office of its registered agent, as changed, will be identical.

Dated _____,

(Note 2)

(Note 3)

Signature of partner

Print or type name

- Notes:
- 1. Refer to law RSA 304-A:49. (If a post office box is given, the physical location must also be given.)
 - 2. Exact name of the registered limited liability partnership.
 - 3. Must be executed by one or more partners authorized to execute the document. If the partner executing the document is other than a natural person, the document shall be executed on the partner's behalf by a general partner of a limited partnership, an officer of a corporation, a member or manager of a limited liability company, or a person authorized by law to execute on behalf of the partner.

STATE OF NEW HAMPSHIRE

Filing fee: \$15.00
Use black print or type.

Form No. LLP 5-A
RSA 304-A:49 IV

REGISTERED LIMITED LIABILITY PARTNERSHIP
NOTICE OF CHANGE OF REGISTERED OFFICE
BY REGISTERED AGENT

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF SECTION 49 IV OF CHAPTER 304-A OF THE NEW HAMPSHIRE REVISED STATUTES ANNOTATED, THE UNDERSIGNED SUBMITS THE FOLLOWING NOTICE FOR THE PURPOSE OF CHANGING THE REGISTERED OFFICE OF THE LIMITED LIABILITY PARTNERSHIP(S) LISTED BELOW FOR WHICH HE/IT SERVES AS REGISTERED AGENT:

FIRST: Name of limited liability partnership(s):

[If more space needed, attach additional Sheet(s)]

SECOND: The street address, town/city of the present registered office for each limited liability partnership listed above is: _____

THIRD: The street address, town/city to which the registered office is to be changed: _____

FOURTH: The name of the present registered agent is: _____

FIFTH: The street address, town/city of the registered office and the address of the business office of the registered agent, as changed, will be identical.

SIXTH: A copy of this statement has been mailed to each limited liability partnership listed above.

Dated _____

By _____

Signature of Registered Agent

Print or type name

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

State of New Hampshire

NOTICE OF REGISTRATION AS A
FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIP
INSTRUCTIONS FOR COMPLETING FORM FLLP-1 (RSA 304-A:50 IV)

ARTICLE
NUMBER:

- FIRST: Exact name of foreign registered limited liability partnership.
- SECOND: If the name of the foreign registered limited liability partnership does not contain the words "professional limited, "registered limited liability partnership" or "LLP," "R.L.L.P.," "limited liability partnership," "PLLP," "P.L.L.," "P.L.L.P.," liability partnership," or the abbreviation "L.L.P.," or "PLL," as the last words or letters of its name, insert the name of the limited liability partnership with one of the above designations as the last words or letters.
- OR**
- If the foreign registered limited liability partnership name is not available for use in New Hampshire, enter the name to be used in New Hampshire. In this case a trade name application must be filed with an additional \$50.00 fee and a copy of the partners' resolution to use the trade name in New Hampshire. A limited liability partnership designation cannot be used on the trade name. See "SIGNATURE" for who must sign the resolution. If the foreign registered limited liability partnership name is available, and a trade name in addition to the foreign registered limited liability partnership name is to be used, do not enter the trade name in this space but file a trade name application with a \$50.00 fee.
- THIRD: Complete address (street, town/city, state) of principal office.
- FOURTH: State or country of formation.
- FIFTH: Each registered foreign registered limited liability partnership shall have and maintain in New Hampshire:
(a) A registered office that may be the same as any of its places of business; and
(b) A registered agent, which agent may be either an individual resident of New Hampshire whose business office is identical with the partnership's registered office, or a domestic corporation, or a foreign corporation authorized to do business in New Hampshire having a business office identical with such registered office.
- SEVENTH: This form must be accompanied by form SRA, certification pursuant to RSA 421-B:11, II, stating that the corporation's capital stock has either been registered or exempted from registration under the Uniform Securities Act. Call the Bureau of Securities Regulation (603-271-1463) with any questions you may have with this requirement. Call the Corporation Division (603-271-3244) regarding any other questions concerning this application.

NOTES: Any other information the partnership determines to include may be added. If more space is needed, attach additional pages.

An **ORIGINAL** certificate of existence or good standing **must accompany** this application. (Photocopies or fax copies will not be accepted.) The certificate must be duly authenticated within 60 days of the filing of this application by the proper official of the state or country under the laws of which the limited liability partnership was formed. (A certificate of good standing regarding taxes from a state department of revenue administration **is not acceptable**.)

Mail fees, DATED AND SIGNED ORIGINAL, CERTIFICATE OF EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF FORMATION AND FORM SRA to: Corporate Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

State of New Hampshire

Filing fee: \$50.00

Fee for Form SRA: \$50.00

Total fees: \$100.00

Use black print or type.

Form must be single-sided, on 8½" x 11" paper;
double sided copies will not be accepted.

Form FLLP-1
RSA 304-A:50, IV

NOTICE OF REGISTRATION AS A
FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIP

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE LIMITED LIABILITY PARTNER-
SHIP LAWS, THE UNDERSIGNED HEREBY SUBMITS THE FOLLOWING STATEMENTS FOR
REGISTRATION TO TRANSACT BUSINESS IN NEW HAMPSHIRE:

FIRST: The name of the foreign registered limited liability partnership is _____
_____.

SECOND: The name which it proposes to register and do business in New Hampshire is _____

_____.

THIRD: The address of its principal office is _____
_____.

FOURTH: It is formed and registered under the laws of _____.

FIFTH: The name of its registered agent in New Hampshire for service of process is _____

and the complete address (including zip code and post office box, if any) of its registered office in New
Hampshire is (agent's business address) _____
_____.

SIXTH: The business in which the partnership engages is (brief statement): _____

_____.

SEVENTH: The sale or offer for sale of any ownership interests in this business will comply with the
requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

NOTICE OF REGISTRATION AS A FOREIGN
REGISTERED LIMITED LIABILITY PARTNERSHIP OF

Form FLLP-1
(Cont.)

*Signature: _____

Print or type name: _____

Date signed: _____

Complete address of person signing: _____

*** SIGNATURE:** Must be executed by one or more partners authorized to execute the document. If the partner executing the document is other than a natural person, the document shall be executed on the partner's behalf by a general partner of a limited partnership, an officer of a corporation, a member or manager of a limited liability company, or a person authorized by law to execute on behalf of the partner.

DISCLAIMER: All documents filed with the Corporate Division become public records and will be available for public inspection in either tangible or electronic form.

Mail fees, DATED AND SIGNED ORIGINAL CERTIFICATE OF EXISTENCE OR GOOD STANDING ISSUED BY THE STATE OR COUNTRY OF FORMATION AND FORM SRA to:
Corporate Division, Department of State, 107 North Main Street, Concord, NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. FLLP 2
RSA 304-A:48

NOTICE OF CHANGE IN REGISTRATION OF A
FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIP

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE LIMITED LIABILITY PARTNERSHIP LAWS, THE UNDERSIGNED HEREBY SUBMITS THE FOLLOWING STATEMENTS FOR NOTICE OF CHANGE:

FIRST: The name under which the foreign registered limited liability partnership was registered in New Hampshire is _____

SECOND: The date the foreign limited liability partnership was originally registered in New Hampshire was: _____

THIRD: The new name and/or new information is: _____

NOTICE OF CHANGE IN REGISTRATION FOR A
FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIP

Form No. FLLP 2
(Cont.)

(foreign registered limited liability partnership
name as presently recorded in New Hampshire)

Dated _____, _____

(Exact present name of foreign registered limited liability partnership)

* _____
(Signature of partner)

(Type or print name of person signing)

Complete address of person signing:

(Phone Number)

(Email Address)

* Must be executed by one or more partners authorized to execute the document. If the partner executing the document is other than a natural person, the document shall be executed on the partner's behalf by a general partner of a limited partnership, an officer of a corporation, a member or manager of a limited liability company, or a person authorized by law to execute on behalf of the partner.

An **ORIGINAL** certificate of existence or good standing must accompany this application. (Photocopies or fax copies will not be accepted.) The certificate must be duly authenticated within 60 days of the filing of this application by the proper official of the state or country under the laws of which the limited liability partnership was formed. (A certificate of good standing regarding taxes from a state department of revenue administration is not acceptable.)

Mail fee, DATED AND SIGNED ORIGINAL AND CERTIFICATE OF EXISTENCE OR GOOD STANDING to: Corporation Division, Department of State, 107 North Main Street, Concord NH 03301-4989.

STATE OF NEW HAMPSHIRE

Filing fee: \$35.00
Use black print or type.

Form No. FLLP 3
RSA 304-A:50, VIII (a) (1)

NOTICE OF WITHDRAWAL OF REGISTRATION OF A
FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIP

TO THE SECRETARY OF STATE OF THE STATE OF NEW HAMPSHIRE

PURSUANT TO THE PROVISIONS OF THE NEW HAMPSHIRE LIMITED LIABILITY PARTNERSHIP LAWS, THE UNDERSIGNED HEREBY SUBMITS THE FOLLOWING STATEMENTS FOR THE PURPOSE OF WITHDRAWING THE REGISTRATION:

FIRST: The name of the foreign registered limited liability partnership is _____

SECOND: The date the foreign limited liability partnership was registered in New Hampshire was: _____

THIRD: It was formed under the laws of: _____

Dated _____, _____

★ _____
(Signature of partner)

(Type or print name of person signing)

(Phone Number)

(Email Address)

★ Must be executed by one or more partners authorized to execute the document. If the partner executing the document is other than a natural person, the document shall be executed on the partner's behalf by a general partner of a limited partnership, an officer of a corporation, a member or manager of a limited liability company, or a person authorized by law to execute on behalf of the partner.

Mail fee with DATED AND SIGNED ORIGINAL to: Corporation Division,
Department of State, 107 North Main Street, Concord, NH 03301-4989.

Form SRA – Addendum to Business Organization and Registration Forms
Statement of Compliance with New Hampshire Securities Laws

Part I – Business Identification and Contact Information

Business Name: _____

Business Address (include city, state, zip): _____

Telephone Number: (____) _____ E-mail: _____

Contact Person: _____

Contact Person Address (If Different): _____

Part II – Check ONE of the following items in Part II. If more than one item is checked, the form will be rejected.
[PLEASE NOTE: Most small businesses registering in New Hampshire qualify for the exemption in Part II, Item 1 below.
However, you must insure that your business meets all of the requirements spelled out in A), B), and C)]:

1. _____ Ownership interests in this business are exempt from the registration requirements of the state of New Hampshire because the business meets ALL of the following three requirements:
- A) This business has *10 or fewer owners*; and
 - B) Advertising *relating to the sale of ownership interests* has not been circulated; and
 - C) Sales of ownership interests – if any – will be *completed within 60 days* of the formation of this business.
2. _____ This business will offer securities in New Hampshire under another exemption from registration or will notice file for federal covered securities. Enter the citation for the exemption or notice filing claimed - _____.
3. _____ This business has registered or will register its securities for sale in New Hampshire. Enter the date the registration statement was or will be filed with the Bureau of Securities Regulation - _____.
4. _____ This business was formed in a state other than New Hampshire and will not offer or sell securities in New Hampshire.

Part III – Check ONE of the following items in Part III:

1. _____ This business *is not being* formed in New Hampshire.
2. _____ This business *is* being formed in New Hampshire and the registration document states that any sale or offer for sale of ownership interests in the business will comply with the requirements of the New Hampshire Uniform Securities Act.

Part IV – Certification of Accuracy

(NOTE: The information in Part IV must be certified by: 1) all of the incorporators of a corporation to be formed; or 2) an executive officer of an existing corporation; or 3) all of the general partners or intended general partners of a limited partnership; or 4) one or more authorized members or managers of a limited liability company; or 5) one or more authorized partners of a registered limited liability partnership or foreign registered limited liability partnership.)

I (We) certify that the information provided in this form is true and complete. (Original signatures only)

Name (print): _____ Signature: _____

Name (print): _____ Signature: _____

Name (print): _____ Signature: _____

Date: _____

Instructions – Form SRA

**Instructions for
Form SRA – Addendum to Business Organization and Registration Forms
Statement of Compliance with New Hampshire Securities Laws**

This form is required for all businesses being formed or registering in the state of New Hampshire. New Hampshire law requires that before your application for business registration is accepted, you must provide a statement that your business has complied with the state's securities law. A security is an ownership interest in a business. For example, a share of stock is a security and so is an interest in a limited liability company or a limited partnership. So, for example, if you and your wife own the sole interests in a limited liability company, those interests are securities. Generally, a business that issues securities in New Hampshire must either register the securities with the New Hampshire Bureau of Securities Regulation or claim a valid exemption. There are several exemptions from the requirement to register securities. The most common exemption is the exemption described in Part II, Item 1.

Please read the following instructions for each part of Form SRA. These instruction will help you to provide accurate responses.

Part I: Please provide the complete business name and address, including number, street, city, state and zip code. The name of the business must exactly match the name that is on the business formation or registration document being submitted with the Form SRA. In addition, please provide the businesses telephone number, e-mail address (if any), a contact person's name and the contact person's full address if different from the business address.

Part II: One item in Part II must be checked. Check only ONE item in this part.

1. Your business is qualified for the exemption from registration in Item 1 if it meets **ALL** of the requirement listed in A), B), and C) below:
 - A) The business has 10 or fewer owners. So, for example, if you and your wife are forming a limited liability company and there are no other owners, you meet this requirement for an exemption; **AND**
 - B) Advertising relating to the sale of ownership interests in your business has not been circulated. Please note that this requirement asks whether you have circulated advertising **related to the offer or sale of ownership interests**. This requirement does not address advertising related to the sale of your products or services. So, for example, if you advertise that you are selling shares of stock in your corporation, then you do not meet this requirement and cannot claim the exemption; **AND**
 - C) Sales of ownership interests – if any – will be completed within 60 days of the formation of the business. If you do not intend to sell any further ownership interests in your business, then you meet this requirement for an exemption. If you intend to sell more ownership interests in your business and will complete all sales within 60 days, then you meet this requirement. However, if the sale of any ownership interests will occur after 60 days of the formation of the business, you do not meet this requirement and cannot claim the exemption.

If you meet all of these requirements, you may then check off Item 1 and claim this exemption.

2. If you can claim a different registration exemption from the one listed in Item 1 or if you are offering federal covered securities that only require a notice filing in New Hampshire, you should check Item 2. In addition, you must cite the statute for the exemption which you are claiming or for the type of notice filing you are making.

Instructions – Form SRA

- 3. If a New Hampshire business or a business formed in a state other than New Hampshire intends to offer ownership interests for sale and is not subject to any exemption from registration, the securities must be registered with the Bureau of Securities Regulation. If this is the case, you should check Item 3. In addition, you should provide us with the date that you registered the securities or that you intend to register the securities.
- 4. If your business was formed in a state other than New Hampshire and you will not offer or sell ownership interests in New Hampshire, you should check Item 4. Your securities do not need to be registered nor do you need to seek an exemption from registration.

Part III: One item in Part III must be checked. Check only ONE item in this part.

- 1. If your business was *not* formed in New Hampshire, then you should check this item.
- 2. If your business was formed in New Hampshire, then you should check this item.

Part IV: This is a statement certifying the accuracy of all the information contained in the Form SRA. Part IV must be signed. Please note that we cannot accept photocopied signatures for this filing. All signatures must be original. Also, please make note of all individuals who must sign this document:

- 1) *ALL* of the incorporators of *a corporation to be formed*; OR
- 2) *ONE* executive officer of *an existing corporation*; OR
- 3) *ALL* of the general partners or intended general partners of *a limited partnership*; OR
- 4) *ONE or MORE* authorized members or managers of *a limited liability company*; OR
- 5) *ONE or MORE* authorized partners of *a registered limited liability partnership or foreign registered limited liability partnership*.

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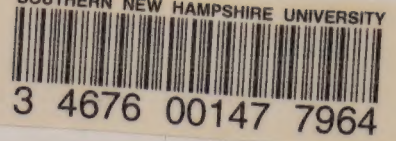
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